



राजपत्र, हिमाचल प्रदेश

(असाधारण)

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, सोमवार, १३ मई, १९९६/२३ बैशाख, १९१८

हिमाचल प्रदेश सरकार

GOVERNMENT OF HIMACHAL PRADESH

LAW DEPARTMENT

Legislation (English) Section

NOTIFICATIONS

Shimla-2, the 29th March, 1996

No.LLR-E(9) 8/96-Leg.—The following Acts have been passed by the Parliament and published in the Gazette of India, Extra-ordinary, Part-II, Section-I, are hereby published in the

Gazette of Himachal Pradesh Government for the information of general public.

Sr. No.	Name of Acts	Act No.	Date on which Acts are published in the Gazette of India
1	2	3	4
1.	The Wakf Act, 1995	43 of 1995	22-11-1995
2.	The Technology Development Board Act, 1996	44 of 1995	18-12-1995
3.	The Research and Development Cess (Amendment) Act, 1995.	45 of 1995	18-12-1995
4.	The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.	1 of 1996	1-1-1996
5.	The Uttar Pradesh State Legislations (Delegation of Powers) Act, 1995.	2 of 1996	1-1-1996

By order,

Sd/-

Secretary (Law),

to the Government of Himachal Pradesh.

THE WAKF ACT, 1995

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Act No. XLIII-F of 1993.

THE WAKF ACT, 1995

AN

ACT

to provide for the better administration of Wakfs and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Wakf Act, 1995.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force in a State on such date as the Central Government may, by notification in the Official Gazette, appoint; and different dates may be appointed for different areas within a State and for different provisions of this Act, and any reference in any provision to the commencement of this Act, shall, in relation to any State or area therein, be construed as reference to the commencement of that provision in such State or area.

2. *Application of the Act.*—Save as otherwise expressly provided under this Act, this Act shall apply to all wakfs whether created before or after the commencement of this Act :

Provided that nothing in this Act shall apply to Durgah Khawaja Saheb, Ajmer to which the Durgah Khawaja Saheb Act, 1955 (36 of 1955) applies.

3. *Definitions.*—In this Act, unless the context otherwise requires—

- (a) “beneficiary” means a person or object for whose benefit a wakf is created and includes religious, pious and charitable objects and any other objects of public utility sanctioned by the Muslim law ;
- (b) “benefit” does not include any benefit which a mutawalli is entitled to claim solely by reason of his being such mutawalli ;
- (c) “Board” means a Board of Wakf established under sub-section (1), or as the case may be, under sub-section (2) of section 13 and shall include a common Wakf Board established under section 106 ;
- (d) “Chief Executive Officer” means the Chief Executive Officer appointed under sub-section (1) of section 23 ;
- (e) “Council” means the Central Wakf Council established under section 9 ;
- (f) “Executive Officer” means the Executive Officer appointed by the Board under sub-section (1) of section 38 ;

- (g) "list of wakfs" means the list of wakfs published under sub-section (2) of section 5;
- (h) "member" means a member of the Board and includes the Chairperson ;
- (i) "mutawalli" means any person appointed, either verbally or under any deed or instrument by which a wakf has been created, or by a competent authority, to be the mutawalli of a wakf and includes any person who is a mutawalli of a wakf by virtue of any custom or who is a naib-mutawalli, khadim, mujawar, sajjadanashin, amin or other person appointed by the mutawalli to perform the duties of a mutawalli and save as otherwise provided in this Act, any person, committee or corporation for the time being managing or administering any wakf or wakf property :
- Provided that no member of a committee or corporation shall be deemed to be a mutawalli unless such members is an office bearer of such committee or corporation ;
- (j) "net annual income", in relation to a wakf, means net annual income determined in accordance with the provisions of the *Explanations to sub-section (1) of section 72* ;
- (k) "person interested in a wakf" means any person who is entitled to receive any pecuniary or other benefits from the wakf and includes—
- (i) any person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, khangah, maqbara, graveyard or any other religious institution connected with the wakf or to participate in any religious or charitable institution under the wakf ;
- (ii) the wakf and any descendant of the wakf and the mutawalli ;
- (l) "prescribed", except in Chapter III, means prescribed by rules made by the State Government ;
- (m) "regulations" means the regulations made by the Board under this Act ;
- (n) "Shia wakf" means a wakf governed by Shia law ;
- (o) "Sunni wakf" means a wakf governed by Sunni law ;
- (p) "Survey Commissioner" means the Survey Commissioner of Wakf appointed under sub-section (1) of section 4 and includes any Additional or Assistant Survey Commissioners of Wakfs under sub-section (2) of section 4 ;
- (q) "Tribunal", in relation to any area, means the Tribunal constituted under sub-section (1) of section 83, having jurisdiction in relation to that area ;
- (r) "wakf" means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes—
- (i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser ;
- (ii) "grants", including mashrut-ul-khidmat for any purpose recognised by the Muslim law as pious, religious or charitable ; and
- (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable, and "wakf" means any person making such dedication ;

(s) "wakf deed" means any deed or instrument by which a wakf has been created and includes any valid subsequent deed or instrument by which any of the terms of the original dedication have been varied ;

(t) "Wakf Fund" means a wakf fund formed under sub-section (1) of section 77.

CHAPTER II

SURVEY OF WAKFS

4. *Preliminary survey of wakfs.*—(1) The Government may, by notification in the Official Gazette, appoint for the State a Survey Commissioner of Wakfs and as many Additional or Assistant Survey Commissioners of Wakfs as may be necessary for the purpose of making a survey of wakfs existing in the State at the date of the commencement of this Act.

(2) All additional and Assistant Survey Commissioners of Wakfs shall perform their functions under this Act under the general supervision and control of the Survey Commissioner of Wakfs.

(3) The Survey Commissioner shall, after making such inquiry as he may consider necessary, submit his report, in respect of wakfs existing at the date of the commencement of this Act in the State or any part thereof, to the State Government containing the following particulars, namely:—

- (a) the number of wakfs in the State showing the Shia wakfs and Sunni wakfs separately ;
- (b) the nature and objects of each wakf ;
- (c) the gross income of the property comprised in each wakf, ;
- (d) the amount of land revenue, cesses, rates and taxes payable in respect of each wakf ;
- (e) the expenses incurred in the realisation of the income and the pay or other remuneration of the mutawalli of each wakf ; and
- (f) such other particulars relating to each wakf as may be prescribed.

(4) The Survey Commissioner shall, while making any inquiry, have the same powers as are vested in a civil court under the Code of Civil Procedure , 1908 (6 of 1908) in respect of the following matters, namely:—

- (a) summoning and examining any witness ;
- (b) requiring the discovery and production of any document ;
- (c) requisitioning any public record from any court or office ;
- (d) issuing commissions for the examination of any witness or accounts ;
- (e) making any local inspection or local investigation ;
- (f) such other matters as may be prescribed .

(5) If, during any such inquiry, any dispute arises as to whether a particular wakf is a Shia wakf or Sunni wakf and there are clear indications in the deed of wakf as to its nature, the dispute shall be decided on the basis of such deed.

(6) The State Government may, by notification in the Official Gazette, direct the Survey Commissioner to make a second or subsequent survey of wakf properties in the State and the provisions of sub-sections (2), (3), (4) and (5) shall apply to such survey as they apply to a survey directed under sub-section (1) :

Provided that no such second or subsequent survey shall be made until the expiry of a period of twenty years from the date on which the report in relation to the immediately previous survey was submitted under sub-section (3).

5. *Publication of list of wakfs.*—(1) On receipt of a report under sub-section (3) of section 4, the State Government shall forward a copy of the same to the Board.

(2) The Board shall examine the report forwarded to it under sub-section (1) and publish in the Official Gazette a list of Sunni wakf or Shia wakfs in the State, whether in existence at the commencement of this Act or coming into existence thereafter, to which the report relates, and containing such other particulars as may be prescribed.

6. *Disputes regarding wakfs.*—(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board of the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation.—For the purposes of this section and section 7, the expression “any person interested therein”, shall, in relation to any property specified as wakf property in the list of wakf published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under section 4.

(2) Notwithstanding anything contained in sub-section (1), no proceeding under this Act in respect of any wakf shall be stayed by reason only of the pendency of any such suit or of any appeal or other proceeding arising out of such suit.

(3) The Survey Commissioner shall not be made a party to any suit under sub-section (1) and no suit, prosecution or other legal proceeding shall lie against him in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rules made there-under.

(4) The list of wakfs shall, unless it is modified in pursuance of a decision of the Tribunal under sub-section (1), be final and conclusive.

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

7. *Power of Tribunal to determine disputes regarding wakfs.*—(1) If, after the commencement of this Act, any question arises, whether a particular property specified as wakf property in a list of wakfs is wakf property or not, or whether a wakf specified in such list is a Shia wakf or a Sunni wakf, the Board or the mutawalli of the wakf, or any person interest therein, may apply

to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final :

Provided that—

- (a) in the case of the list of wakfs relating to any part of the State and published after the commencement of this Act no such application shall be entertained after the expiry of one year from the date of publication of the list of wakfs ; and
- (b) in the case of the list of wakfs relating to any part of the State and published at any time within a period of one year immediately preceding the commencement of this Act, such an application may be entertained by Tribunal within the period of one year from such commencement :

Provided further that where any such question has been heard and finally decided by a civil court in a suit instituted before such commencement, the Tribunal shall not re-open such question.

(2) Except where the Tribunal has no jurisdiction by reason of the provisions of sub-section (5), no proceeding under this section in respect of any wakf shall be stayed by any court, tribunal or other authority by reason only of the pendency of any suit, application appeal or other proceeding arising out of any such suit, application, appeal or other proceeding.

(3) The Chief Executive Officer shall not be made a party to any application under sub-section (1).

(4) The list of wakfs and where any such list is modified in pursuance of a decision of the Tribunal under sub-section (1), the list as so modified, shall be final.

(5) The Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court under sub-section (1) of section 6, before the commencement of this Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding or appeal, as the case may be.

8. *Recovery of costs of survey.*—(1) The total cost of making a survey including the cost of publication of the list or lists of wakfs under this Chapter shall be borne by all the mutawalli of the wakfs the net annual income whereof exceeds five hundred rupees, in proportion to the net annual income accruing in the State to such wakfs, such proportion being assessed by the survey Commissioner.

(2) Notwithstanding anything contained in the deed or instrument by which the wakf was created, any mutawalli may pay from the income of the wakf any sum due from him under sub-section (1).

(3) Any sum due from a mutawalli under sub-section (1) may, on a certificate issued by the State Government, be recovered from the property comprised in the wakf in the same manner as an arrear of land revenue.

CHAPTER III

CENTRAL WAKF COUNCIL

9. *Establishment and constitution of Central Wakf Council.*—(1) For the purpose of advising it, on matters concerning the working of Boards and the due administration of wakfs, the

Central Government may, by notification in the Official Gazette, establish a Council to be called the Central Wakf Council.

(2) The Council shall consist of,—

(a) the Union Minister in charge of wakfs-ex-officio Chairperson ;

(b) the following members to be appointed by the Central Government from amongst Muslims, namely:—

(i) three persons to represent Muslim organisations having all India character and national importance ;

(ii) four persons of national eminence of whom two shall be from amongst persons having administrative and financial expertise ;

(iii) three Members of Parliament of whom two shall be from the House of the People and one from the Council of States ;

(iv) chairpersons of three Boards by rotation ;

(v) two persons who have been judges of the Supreme Court or a High Court ;

(vi) one advocate of national eminence ;

(vii) one person to represent the mutawallis of the wakf having a gross annual income of rupees five lakhs and above ;

(viii) three persons who are eminent scholars in Muslim Law.

(3) The term of office of the procedure to be followed in the discharge of their functions by and the manner of filling casual vacancies among members of the Council shall be such as may be prescribed by rules made by the Central Government

10. Finance of Council.—(1) Every Board shall pay from its Wakf Fund annually to the Council such contribution as is equivalent to one per cent of the aggregate of the net annual income of the wakfs in respect of which contribution is payable under sub-section (1) of section 72 :

Provided that where the Board, in the case of any particular wakf has remitted under sub-section (2) of section 72 the whole of the contribution payable to it under sub-section (1) of that section, then for calculating the contribution payable to the Council under this section the net annual income of the wakf in respect of which such remission has been granted shall not be taken into account.

(2) All monies received by the Council under sub-section (1) and all other monies received by it as donations, benefactions and grants shall form a fund to be called the Central Wakf Fund.

(3) Subject to any rules that may be made by the Central Government in this behalf, the Central Wakf Fund shall be under the control of the Council and may be applied for such purposes as the Council may deem fit .

11. Accounts and Audit.—(1) The Council shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be prescribed by rules made by the Central Government.

(2) The accounts of the Council shall be audited and examined annually by such auditor as may be appointed by the Central Government.

(3) The costs of the audit shall be paid from the Central Wakf Fund.

12. Power of Central Government to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the term of office of, the procedure to be followed in the discharge of their functions by, and the manner of filling casual vacancies among, the members of the Council ;

(b) control over and application of the Central Wakf Fund ;

(c) the form and manner in which accounts of the Council may be maintained ;

(3) Every rule made by the Central Government under this Chapter shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following, the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

CHAPTER IV

ESTABLISHMENT OF BOARD AND THEIR FUNCTIONS

13. Incorporation.—(1) With effect from such date as the State Government may, by notification in the Official Gazette, appoint in this behalf, there shall be established a Board of Wakfs under such name as may be specified in the notification.

(2) Notwithstanding anything contained in sub-section (1), if the Shia wakfs in any State constitute in number more than fifteen per cent. of all the wakfs in the State or if the income of the properties of the Shia wakfs in the State constitutes more than fifteen per cent of the total income of properties of all the wakfs in the State, the State Government may, by notification in the Official Gazette, establish a Board of Wakfs each for Sunni wakfs and for Shia wakfs under such names as may be specified in the notification.

(3) The Board shall be a body corporate having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property subject to such conditions and restrictions as may be prescribed and shall by the said name sue and be sued.

14. Composition of Board.—(1) The Board for a State and the Union territory of Delhi shall consist of—

(a) Chairperson ;

(b) one and not more than two members, as the State Government may think fit, to be elected from each of the electoral colleges consisting of—

(i) Muslim Members of Parliament from the State or, as the case may be, the Union territory of Delhi,

- (ii) Muslim Members of the State Legislature,
- (iii) Muslim Members of the Bar Council of the State, and
- (iv) mutawallis of the wakfs having an annual income of rupees one lakh and above ;
- (c) one and not more than two members to be nominated by the State Government representing eminent Muslim organisations ;
- (d) one and not more than two members to be nominated by the State Government, each from recognised scholars in Islamic Theology ;
- (e) an officer of the State Government not below the rank of Deputy Secretary.

(2) Election of the members specified in clause (b) of sub-section (1) shall be held in accordance with the system of proportional representation by means of a single transferable vote, in such manner as may be prescribed :

Provided that where the number of Muslim Members of Parliament, the State Government or the State Bar Council, as the case may be, is only one, such Muslim Members shall be declared to have been elected on the Board :

Provided further that where there are no Muslim Members in any or the categories mentioned in sub-clause (i) to (iii) of clause (b) of sub-section (1), the ex-Muslim Members of Parliament, the State Legislature or ex-member of the State Bar Council, as the case may be, shall constitute the electoral college.

(3) Notwithstanding anything contained in this section, where the State Government is satisfied, for reasons to be recorded in writing, that it is not reasonably practicable to constitute an electoral college for any of the categories mentioned in sub-clause (i) to (iii) of clause (b) of sub-section (1), the State Government may nominate such persons as the members of the Board as it deems fit.

(4) The number of elected members of the Board shall at all times, be more than the nominated members of the Board except as provided under sub-section (3).

(5) Where there are Shia wakfs but no separate Shia Wakfs Board exists at least one of the members from the categories listed in sub-section (1), shall be a Shia Muslim.

(6) In determining the number of Shia members or Sunni members of the Board, the State Government shall have regard to the number and value of Shia wakfs and Sunni wakfs to be administered by the Board and appointment of the members shall be made, so far as may be, in accordance with such determination.

(7) In the case of the Union territory other than Delhi, the Board shall consist of not less than three and not more than five members to be appointed by the Central Government from amongst the categories of persons specified in sub-section (1):

Provided that there shall be one mutawalli as the member of the Board.

(8) Whenever the Board is constituted or re-constituted, the members of the Board present at a meeting convened for the purpose shall elect one from amongst themselves as the Chairperson of the Board.

(9) The members of the Board shall be appointed by the State Government by notification in the Official Gazette.

15. *Term of office.*—The Members of the Board shall hold office for a term of five years.

16. *Disqualification for being appointed, or for continuing as, a member of the Board.*—A person shall be disqualified for being appointed, or for continuing as, a member of the Board if—

- (a) he is not a Muslim and is less than twenty-one years of age ;
- (b) he is found to be a person of unsound mind ;
- (c) he is an undischarged insolvent ;
- (d) he has been convicted of an offence involving moral turpitude and such conviction has not been reversed or he has not been granted full pardon in respect of such offence ;
- (e) he has been on a previous occasion—
 - (i) removed from his office as a member or as a mutawalli, or
 - (ii) removed by an order of a competent court or tribunal from any position of trust either for mismanagement or for corruption.

17. *Meetings of the Board.*—(1) The Board shall meet for the transaction of business at such time and places as may be provided by regulations.

(2) The Chairperson, or in his absence, any member chosen by the members from amongst themselves shall preside at a meeting of the Board.

(3) Subject to the provisions of this Act, all questions which come before any meeting of the Board shall be decided by a majority of votes of the members present and in the case of equality of votes, the Chairperson or, in his absence, any other person presiding shall have second or casting vote.

18. *Committees of the Board.*—(1) The Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs.

(2) The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board ;

Provided that it shall not be necessary for the members of such, committees to be members of the Board.

19. *Resignation of Chairperson and members.*—The Chairperson or any other member may resign his office by writing under his hand addressed to the State Government :

Provided that the Chairperson or the members shall continue in office until the appointment of his successor is notified in the official Gazette.

20. *Removal of Chairperson and members.*(1) The State Government may, by notification in the official Gazette, remove the Chairperson of the Board or any member thereof if he.—

- (a) is or becomes subject to any disqualifications specified in section 16; or
- (b) refuses to act or incapable of acting or acts in a manner which the state Government, after hearing any explanation that he may offer considers to be prejudicial to the interests of the wakfs; or

(c) fails in the opinion of the Board, to attend three consecutive meetings of the Board, without sufficient excuse.

(2) Where the Chairperson of the Board is removed under sub-section (1), he shall also cease to be a member of the Board.

21. Filling of a vacancy.—When the seat of a member becomes vacant by his removal, resignation, death or otherwise, a new member shall be appointed in his place and such member shall hold office so long as the member whose place he fills would have been entitled to hold office, if such vacancy had not occurred.

22. Vacancies etc., not to invalidate proceedings of the Board.—No act or proceeding of the Board shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.

23. Appointment of Chief Executive officer and his term of office and other condition of service.—(1) There shall be a Chief Executive officer of the Board who shall be a Muslim and shall be appointed by the State Government, in consultation with the Board, by notification in the official Gazette.

(2) The term of office and other conditions of service of the Chief Executive officer shall be such as may be prescribed.

(3) The Chief Executive officer shall be *ex officio* Secretary of the Board and shall be under the administrative control of the Board.

24. Officers and other employees of the Board.—(1) The Board shall have the assistance of such number of officers and other employees as may be necessary for the efficient performance of its functions under this Act, details thereof shall be determined by the Board in consultation with the State Government.

(2) The appointment of officers and other employees, their term of office and conditions of service shall be such as may be provided by regulations.

25. Duties and powers of Chief Executive officer.—(1) Subject to the provisions of this Act and of the rules made thereunder and the directions of the Board, functions of the Chief Executive officer shall include—

- (a) investigating the nature and extent of wakfs and wakf properties and calling whenever necessary, an inventory of wakf properties and calling, from time to time for accounts returns and information from mutawallis;
- (b) inspecting or causing inspection of wakf properties and account, records, deeds or documents relating thereto;
- (c) doing generally of such acts as may be necessary for the control, maintenance and superintendence of wakfs.

(2) In exercising the powers of giving directions under sub-section (1) in respect of any wakf, the Board shall act in conformity with the directions by the wakf in the deed or the wakf, the purpose of wakf and such usage and customs of the wakf as are sanctioned by the school of Muslim law to which the wakf belongs.

(3) Save as otherwise expressly provided in this Act, the Chief Executive officer shall exercise such powers and perform such duties as may be assigned to him or delegated to him under this Act.

26. *Powers of Chief Executive officer in respect of orders or resolutions of Board.*—Where the Chief Executive officer considers that an order or resolution passed by the Board—

- (a) has not been passed in accordance with the law; or
- (b) is in excess of or is an abuse of the powers conferred on the Board by or under this Act or by any other law; or
- (c) if implemented, is likely to—
 - (i) cause financial loss to the Board or to the concerned wakf or to the wakfs generally; or
 - (ii) lead to a riot or reach of peace; or
 - (iii) cause danger to human life, health or safety; or
- (d) is not beneficial to the Board or to any wakf or to wakfs generally,

he may, before implementing such order or resolution place the matter before the Board for its reconsideration and, if such order or resolution is not confirmed by a majority of vote of the members present and voting after such reconsideration, refer the matter to the State Government along with his objections to the order or resolution, and the decision of the State Government thereon shall be final.

27. *Delegation of powers by the Board.*—The Board may, by a general or special order in writing, delegate to the Chairperson, any other member, the Secretary or any other officer or servant of the Board or any area committee, subject to such conditions and limitations as may be specified in the said order, such of its powers and duties under this Act, as it may deem necessary.

28. *Chief Executive officer to exercise powers through Collectors, etc.*—(1) Subject to the provisions of this Act and the rules made thereunder, the Chief executive officer may exercise all or any of the powers conferred on him by or under this Act with the previous approval of the Board through the Commissioner of the division or the Collector of the district in which the concerned wakf property is situated or through any other Gazetted officer whom he may appoint for such purpose and may, from time to time, delegate any of his powers to any such Commissioner of the division or Collector or any other Gazetted officer and may, at any time revoke the delegations so made by him.

(2) Where any delegation of powers is made by the Chief Executive officer under sub-section (1), the person to whom such delegation is made may exercise those powers in the same manner and to the same extent as if they have been conferred on him directly by this Act and not by way of delegation.

29. *Powers of Chief Executive officer to inspect records, registers, etc.*—The Chief Executive officer or any officer of the Board duly authorised by him in this behalf shall, subject to such conditions and restrictions as may be prescribed and subject to the payment of such fees as may be leviable under any law for the time being in force, be entitled at all reasonable time to inspect, in any public office, any records, registers or other documents relating to a wakf or movable or immovable properties which are wakf properties or are claimed to be wakf properties.

30. *Inspection of records.*—(1) The Board may allow inspection of its proceedings or other records in its custody and issue copies of the same on payment of such fees and subject to such conditions may be prescribed.

(2) All copies issued under this section shall be certified by the Chief Executive Officer of the Board in the manner provided in section 76 of the Indian Evidence Act, 1872 (1 of 1872).

(3) The powers conferred on the Chief Executive Officer by sub-section (2) may be exercised by such other officer or officers of the Board as may either generally or especially be authorised in this behalf by the Board.

31. *Prevention of disqualification for membership Parliament.*—It is hereby declared that the offices of the Chairmanperson or members of a Board shall not be disqualified and shall be deemed never to have been disqualified for being chosen as, or for being, a Member of Parliament.

32. *Powers and functions of the Board.*—(1) Subject to any rules that may be under this Act, the general superintendence of all wakfs in a State shall vest in the Board established or the State ; and it shall be the duty of the Board so to exercise its powers under this Act as to ensure that the wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes for which such wakfs were created or intended :

Provided that in exercising its powers under this Act in respect of any wakf, the Board shall act in conformity with the directions of the wakf, the purposes of the wakf and any usage or custom of the wakf sanctioned by the school of Muslim law to which the wakf belongs.

Explanation.—For the removal of doubts, it is hereby declared that in this sub-section, “wakf” includes a wakf in relation to which any scheme has been made by any court of law, whether before or after the commencement of this Act.

(2) Without prejudice to the generality of the foregoing power, the functions of the Board shall be—

- (a) to maintain a record containing information relating to the origin, income, object and beneficiaries of every wakf ;
- (b) to ensure that the income and other property of wakfs are applied to the objects and for the purposes for which such wakfs were intended or created ;
- (c) to give directions for the administration of wakfs ;
- (d) to settle schemes of management for wakf ;

Provided that no such settlement shall be made without giving the parties affected an opportunity of being heard ;

(e) to direct—

- (i) the utilisation of the surplus income of a wakf consistent with the objects of a wakf ;
- (ii) in what manner the income of a wakf, the objects of which are not evident from any written instrument, shall be utilized ;
- (iii) in any case where any object of wakf has ceased to exist or has become incapable of achievement, that so much of the income of the wakf as was previously applied to that object shall be applied to any other object, which shall be similar, or nearly similar or to the original object or for the benefit of the poor or for the purpose of promotion of knowledge and learning in the Muslim community :

Provided that no direction shall be given under this clause without giving the parties affected an opportunity of being heard.

Explanation.—For the purposes of this clause, the powers of the Board shall be exercised—

- (i) in the case of a Sunni wakf, by the Sunni members of the Board only ; and
- (ii) in the case of a Shia wakf, by the Shia members of the Board only :

Provided that where having regard to the number of the Sunni or Shia members in the Board and other circumstances, it appears to the Board that the power should not be exercised by such members only, it may co-opt such other Mullins being Sunnis or Shias, as the case may be, as it thinks fit, to be temporary members of the Board for exercising its power under this clause ;

- (f) to scrutinise and approve the budgets submitted by mutawallis and to arrange for the auditing of account of wakfs ;
- (g) to appoint and remove mutawalli in accordance with the provisions of this Act ;
- (h) to take measure for the recovery of lost properties of any wakf ;
- (i) to institute and defend suits and proceedings relating to wakfs ;
- (j) to sanction any transfer of immovable property of a wakf, by way of sale, gift, mortgage, exchange or lease, in accordance with the provisions of this Act :

Provided that no such sanction shall be given unless at least two thirds of the members of the Board vote in favour of such transaction ;

- (k) to administer the Wakf Fund ;
- (l) to call for such returns, statistics, accounts and other information from the mutawallis with respect to the wakf property as the Board may, from time to time, require ;
- (m) to inspect, or cause inspection of, wakf properties, accounts, records or deeds and documents relating thereto ;
- (n) to investigate and determine the nature and extent of wakf and wakf property and to cause, whenever necessary, a survey of such wakf property ;
- (o) generally do all such acts as may be necessary for the control, maintenance and administration of wakfs.

(3) Where the Board has settled any scheme of management under clause (d) or given any direction under clause (e) of sub-section (2), any person interested in the wakf or affected by such settlement or direction may institute suit in a Tribunal for setting aside such settlement or direction and the decision of the Tribunal thereon shall be final.

(4) Where the Board is satisfied that any wakf land, which is a wakf property, offers a feasible potential for development as a shopping centre, market, housing flats and the like, it may serve upon the mutawalli of the concerned wakf a notice requiring him within such time, but not less than sixty days, as may be specified in the notice, to convey its decision whether he is willing to execute the development works specified in the notice.

(5) On consideration of the reply, if any, received to the notice issued under sub-section (4), the Board, if it is satisfied that the mutawalli is not willing or is not capable of executing the

works required to be executed in terms of the notice, it may, with the prior approval of the Government, take over the property, clear it of any building or structure thereon, which, in the opinion of the Board is necessary for execution of the works and execute such works from Wakf funds or from the finances which may be raised on the security of the properties of the wakf concerned and control and manage the properties till such time as all expenses incurred by the Board under this section, together with interest thereon, the expenditure on maintenance of such works and other legitimate charges incurred on the property are recovered from the income derived from the property :

Provided that the Board shall compensate annually the mutawalli of the concerned wakf to the extent of the average annual net income derived from the property during the three years immediately preceding the taking over of the property by the Board.

(6) After all the expenses as enumerated in sub-section (5) have been recouped from the income of the developed properties, the developed properties shall be handed over to mutawalli of the concerned wakf.

33. Powers of inspection by Chief Executive Officer or persons authorised by him.—(1) With a view to examining whether, by reason of any failure or negligence on the part of a mutawalli in the performance of his executive or administrative duties, any loss or damage has been caused to any wakf or wakf property, the Chief Executive Officer with the prior approval of the Board, either himself or any other person authorised by him in writing in this behalf, may inspect all movable and immovable properties, which are wakf properties, and all records, correspondences plans, accounts and other documents relating thereto.

(2) Whenever any such inspection as referred to in sub-section (1) is made, the concerned mutawalli and all officers and other employees working under him and every person connected with the administration of the wakf, shall extend to the person making such inspection, all such assistance and facilities as may be necessary and reasonably required by him to carry out such inspection, and shall also produce for inspection any movable property or documents relating to the wakf as may be called for by the person making the inspection and furnish to him such information relating to the wakf as may be required by him.

(3) Where, after any such inspection, it appears that the concerned mutawalli or any officer or other employee who is or was working under him had mis-appropriated, misapplied or fraudulently retained, any money or other wakf property, or had incurred irregular, unauthorised or improper expenditure from the funds of the wakf, the Chief Executive Officer may, after giving the mutawalli or the person concerned a reasonable opportunity of showing cause why an order for the recovery of the amount or property, should not be passed against him and after considering such explanation, if any, as such person may furnish, determine the amount or the property, which has been mis-appropriated, misapplied or fraudulently retained, or the amount of the irregular, unauthorised or improper expenditure incurred by such person, and make an order directing such person to make payment of the amount so determined and to restore the said property to the wakf, within such time as may be specified in the order.

(4) A mutawalli or other person aggrieved by such order may, within thirty days of the receipt by him of the order, appeal to the Tribunal :

Provided that no such appeal shall be entertained by the Tribunal unless the appellant first deposits with the Chief Executive Officer the amount which has been determined under sub-section (3) as being payable by the appellant and the Tribunal shall have no power to make any order staying pending the disposal of the appeal, the operation of the order made by the Chief Executive Officer under sub-section (3).

(5) The Tribunal may, after taking such evidence as it may think fit, confirm, reverse or modify the order made by the Chief Executive Officer under sub-section (3) or may remit, either in whole or in part, the amount specified in such order and may make such orders as to costs as it may think appropriate in the circumstances of the case.

(6) The order made by the Tribunal under sub-section (5) shall be final.

34. *Recovery of the amount determined under section 33.*—Where any mutawalli or other person who has been ordered, whether under sub-section (3) or sub-section (5) of section 33, to make any payment or to restore the possession of any property, omits or fails to make such payment or restoration within the time specified in such order, the Chief Executive Officer, with the prior approval of the Board shall, take such steps as he may think fit for the recovery of possession of the property aforesaid and shall also send a certificate to the Collector of the district in which the property of such mutawalli or other person is situate, stating therein the amount that has been determined by him or by the Tribunal, as the case may be, under section 33, as being payable by such mutawalli or other person, and, thereupon, the Collector shall recover the amount specified in such certificate as if it were an arrear of land revenue and on the recovery of such amount, pay the same to the Chief Executive Officer, who shall, on receipt thereof credit the amount to the funds of the concerned wakf.

35. *Conditional attachment by tribunal.*—(1) Where the Chief Executive Officer is satisfied that the mutawalli or any other person who has been ordered under sub-section (3) or sub-section (5) of section 33 to make any payment, with intent defeat or delay the execution of the said order,—

- (a) is about to dispose of the whole or any part of his property ; or
- (b) is about to remove the whole or any part of his property from the jurisdiction of the Chief Executive Officer,

he may, with the prior approval of the Board, apply to the Tribunal for the conditional attachment of the said property or such part thereof, as he may think necessary.

(2) The Chief Executive Officer shall, unless the Tribunal otherwise directs, specify in the application the property required to be attached and the estimated value thereof.

(3) The Tribunal may direct the mutawalli or the person concerned, as the case may be, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Tribunal when required, the said property or the value of the same or such portion thereof as may be sufficient to satisfy the amount specified in the certificate referred to in section 34, or to appear and show cause why he should not furnish such security.

(4) The Tribunal may also in the order direct the conditional attachment of the whole or any portion of the property so specified.

(5) Every attachment made under this section shall be made in accordance with the provisions of the code of Civil Procedure, 1908, (5 of 1908) as if it were an order for attachment made under the provision of the said Code.

CHAPTER V

REGISTRATION OF WAKFS

36. *Registration.*—(1) Every wakf, whether created before or after the commencement of this Act, shall be registered at the office of the Board.

(2) Application for registration shall be made by the mutawalli :

Provided that such applications may be made by the wakf or his descendants or a beneficiary of the wakf or any Muslim belonging to the sect to which the wakf belongs.

(3) An application for registration shall be made in such form and manner and at such place as the Board may by regulation provide and shall contain following particulars:—

(a) a description of the wakf properties sufficient for the identification thereof ;

(b) the gross annual income from such properties ;

(c) the amount of land revenue, cesses, rates and taxes annually payable in respect of the wakf properties ;

(d) an estimate of the expenses annually incurred in the realisation of the income of the wakf properties ;

(e) the amount set apart under the wakf for:—

(i) the salary of the mutawalli and allowances to the individuals ;

(ii) purely religious purposes ;

(iii) charitable purposes ; and

(iv) any other purposes ;

(f) any other particulars provided by the Board by regulations.

(4) Every such application shall be accompanied by a copy of the wakf deed or if no such deed has been executed or a copy thereof cannot be obtained, shall contain full particulars, as far as they are known to the applicant of the origin, nature and objects of the wakf .

(5) Every application made under sub-section (2) shall be signed and verified by the applicant in the manner provided in the Code of Civil Procedure 1908 (5 of 1908) for the signing and verification of pleadings.

(6) The Board may require the applicant to supply any further particulars or information that it may consider necessary.

(7) On receipt of an application for registration, the Board may, before the registration of the wakf make such inquiries as it thinks fit in respect of the genuineness and validity of the application and correctness of any particulars therein and when the application is made by any person other than the person administering the wakf property, the Board shall, before registering the wakf, give notice of the application to the person administering the wakf property and shall hear him if he desires to be heard.

(8) In the case of wakfs created before the commencement of this Act, every application for registration shall be made, within three months from such commencement and in the case of wakfs created after such commencement, within three months from the date of the creation of the wakf :

Provided that where there is no board at the time of creation of a wakf, such application will be made within three months from the date of establishment of the Board.

37. *Register of wakfs.*—The Board shall maintain a register of wakfs which shall contain in respect of each wakf copies of the wakf deeds, when available and the following particulars, namely:—

- (a) the class of the wakf ;
- (b) the name of the mutawalli ;
- (c) the rule of succession to the office of mutawalli under the wakf deed or by custom or by usage ;
- (d) particulars of all wakf properties and all title deeds and documents relating thereto ;
- (e) particulars of the scheme of administration and the scheme of expenditure at the time of registration ;
- (f) such other particulars as may be provided by regulations.

38. *Powers of Board to appoint Executive Officer.*—(1) Notwithstanding anything contained in this Act, the Board may, if it is of the opinion that it is necessary so to do in the interests of the wakf, appoint on whole-time or part-time basis or in an honorary capacity, subject to such conditions as may be provided by regulations, an Executive Officer with such supporting staff as it considers necessary for any wakf having a gross annual income of not less than five lakhs rupees :

Provided that the person chosen for appointment should be a person professing Islam.

(2) Every Executive Officer appointed under sub-section (1) shall exercise such powers and discharge such duties as pertain only to the administration of the property of the wakf for which he has been appointed and shall exercise those power and discharge those duties under the direction, control and supervision of the Board :

Provided that the Executive Officer who is appointed for a wakf having a gross annual income of not less than five lakhs rupees shall ensure that the budget of the wakf is submitted, the accounts of the wakf are regularly maintained, and the yearly statement of accounts are submitted within such time as the Board may specify.

(3) While exercising his powers and discharging his functions under sub-section (2), the Executive Officer shall not interfere with any religious duties or any usage or custom of the wakf sanctioned by the Muslim law.

(4) The salaries and allowances of the Executive Officer and his staff shall be fixed by the Board and in fixing the quantum of such salary the Board shall have due regard to the income of the wakf, the extent and nature of the duties of the Executive Officer and shall also ensure that the amounts of such salaries and allowances are not disproportionate to the income of the wakf and do not operate as an unnecessary financial burden on it.

(5) The salaries and allowances of the Executive Officer and his staff shall be paid by the Board from the Wakf Fund and, if the wakf generates any additional income as a result of appointment of the Executive Officer, the Board may claim reimbursement of amounts spent on the salaries and allowances from the fund of the wakf concerned.

(6) The Board may, for sufficient reason, and after giving to the Executive Officer or a member of his staff, a reasonable opportunity of being heard, suspend, remove or dismiss the Executive Officer or a member of his staff from his post.

(7) Any Executive Officer or a member of his staff who is aggrieved by any order of removal or dismissal made under sub-section (6) may, within thirty days from the date of communication of the order, prefer an appeal against the order to the Tribunal and the Tribunal may, after considering such representation as the Board may make in the matter, and after giving a reasonable opportunity to the Executive Officer or a member of his staff of being heard, confirm, modify or reverse the order.

39. *Powers of Board in relation to wakfs which have ceased to exist.*—(1) The Board shall, if it is satisfied that the objects or any part thereof, of a wakf have ceased to exist, whether such cesser took place before or after the commencement of this Act, cause an inquiry to be held by the Chief Executive Officer, in the prescribed manner, to ascertain the properties and funds pertaining to such wakf.

(2) On the receipt of the report of inquiry of the Chief Executive Officer, the Board shall pass an order—

- (a) specifying the property and funds of such wakf ;
- (b) directing that any property or funds pertaining to such wakf which have been recovered shall be applied or utilised for the renovation of any wakf property and where there is no need for making any such renovation or where utilisation of the funds for such renovation is not possible, be appropriated, to any of the purposes specific in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

(3) The Board may, if it has reason to believe that any building or other place which was being used for religious purpose or instruction or for charity has, whether before or after the commencement of this Act, ceased to be used for that purpose, make an application to the Tribunal for an order directing the recovery of possession of such building or other place.

(4) The Tribunal may, if it is satisfied, after making such inquiry as it may think fit, that such building or other place—

- (a) is wakf property ;
- (b) has not been acquired under any law for the time being in force relating to acquisition of land or is not under any process of acquisition under any such law, or has not vested in the State Government under any law for the time being in force land reforms ; and
- (c) is not in the occupation of any person who has been authorised by or under any law for the time being in force to occupy such building or other place, make an order—
 - (i) directing the recovery of such building or place from any person who may be in unauthorised possession thereof, and
 - (ii) directing that such property, building or place be used for religious purpose or instruction as before, or if such use is not possible, be utilised for any purpose specified in sub-clause (iii) of clause (e) of sub-section (2) of section 32.

40. *Decision if a property is wakf property.*—(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether is wakf is a Sunni wakf or a Shia wakf it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is wakf property, the Board may notwithstanding anything contained in such Act hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is wakf property, call upon the trust or society, societies, as the case may be, either to register such property under this Act as wakf property or show cause why such property should not be so registered.

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be show in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

41. *Power to cause registration of wakf and to amend register.*—The Board may direct a mutawalli to apply for the registration of a wakf or to supply any information regarding a wakf or may itself cause the wakf to be registered or may at any time amend the register of wakfs.

42. *Change the management of wakfs to be notified.*—(1) In the case of any change in the management of a registered wakf due to the death or retirement or removal of the mutawalli, the incoming mutawalli shall forthwith, and any other person may notify the change to the Board.

(2) In the case of any other change in any of the particulars mentioned in section 36, the mutawalli shall, within three months from the occurrence of the change, notify such change to the Board.

43. *Wakfs registered before the commencement of this Act deemed to be registered.*—Notwithstanding anything contained in this Chapter, where any wakf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the wakf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration made under this Act.

CHAPTER VI

MAINTENANCE OF ACCOUNTS OF WAKFS

44. *Budget.*—(1) Every mutawalli of a wakf shall, in every year prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure during that financial year.

(2) Every such budget shall be submitted by the mutawalli at least ninety days before the beginning of the financial year to the Board and shall make adequate provision for the following:—

(i) for carrying out the objects of the wakf ;

(ii) for the maintenance and preservation of the wakf property;

(iii) for the discharge of all liabilities and subsisting commitments binding on the wakf under this Act or any other law for the time being in force.

(3) The Board may give such directions for making alterations, omissions or additions in the budget as it may deem fit, consistent with the objects of the wakf and the provisions of this Act.

(1) If in the course of the financial year the mutawalli find it necessary to modify the provisions made in the budget in regard to the receipt or to the distribution of the amounts to be expended under the different heads, he may submit to the Board a supplementary or a revised budget and the provisions of sub-section (3) shall, as far as may be, apply to such supplementary or revised budget.

45. Preparation of budget of wakfs under direct management of the Board.—(1) The Chief Executive Officer shall prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipts and expenditure for each of the wakfs under the direct management of the Board, showing therein the estimated receipts and expenditure and submit it to the Board for its approval.

(2) While submitting the budget under sub-section (1), the Chief Executive Officer shall also prepare statement giving details of the increase, if any, in the income of each wakf under the direct management of the Board and the steps which have been taken for its better management and the results accruing therefrom during the year.

(3) The Chief Executive Officer shall keep regular accounts and be responsible for the proper management of every wakf under the direct management of the Board.

(4) Every budget submitted by the Chief Executive Officer under sub-section (1) shall comply with the requirements of section 46 and, for this purpose, reference therein to the mutawalli of the wakf shall be construed as pre-references to the Chief Executive Officer.

(5) The audit of accounts of every wakf under the direct management of the Board shall be undertaken by the State Examiner of Local Funds or any other officer appointed by the State Government for this purpose, irrespective of the income of the wakf.

(6) The provisions of sub-sections (2) and (3) of section 47 and the provisions of sections 48 and 49 shall, in so far as they are not inconsistent with the provisions of this section, apply to the audit of accounts referred to in this section.

(7) where any wakf is under the direct management of the Board, such administrative charges as may be specified by the Chief Executive Officer shall be payable by the wakf to the Board :

Provided that the Chief Executive Officer shall not collect more than ten per cent of the gross annual income of the wakf under the direct management of the Board as administrative charges.

46. Submission of accounts of wakfs.—(1) Every mutawalli shall keep regular accounts.

(2) Before the 1st day of May next, following the date on which the application referred to in section 36 has been made and thereafter before the 1st day of May in every year, every mutawalli of a wakf shall prepare and furnish to the Board a full and true statement of accounts, in such form and containing such particulars as may be provided by regulations by the Board, of all moneys received or expended by the mutawalli on behalf of the wakf during the period of twelve months ending on the 31st day of March, or, as the case may be, during that portion of the said period during which the provisions of this Act, have been applicable to the wakf :

Provided that the date on which the annual accounts are to be closed may be varied at the discretion of the Board.

47. Audit of accounts of wakfs.—(1) The accounts of wakfs submitted to the Board under section 46 shall be audited and examined in the following manner, namely:—

(a) in the case of a wakf having no income or a net annual income not exceeding ten thousand rupees, the submission of a statement of accounts shall be a sufficient compliance with the provisions of section 46 and the accounts of two per cent of such wakfs shall be audited annually by an auditor appointed by the Board ;

(b) the accounts of the wakf having net annual income exceeding ten thousand rupees shall be audited annually, or at such other intervals as may be prescribed, by an auditor appointed by the Board from out of the panel of auditors prepared by the State Government and while drawing up such panel of auditors, the State Government shall specify the scale of remuneration of auditors;

(c) the State Government may, at any time cause the account of any wakf audited by the State Examiner of Local Funds or by any other officer designated for that purpose by that State Government ;

(2) The auditor shall submit his report to the Board and the report of the auditor shall, among other things, specify all cases of irregular, illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor, is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit of the accounts of a wakf shall be met from the funds of that wakf :

Provided that the remuneration of the auditors appointed from out of the panel drawn by the State Government in relation to wakfs having a net annual income of more than ten thousand rupees but less than fifteen thousand rupees shall be paid in accordance with the scale of remuneration specified by the State Government under clause (c) of sub-section (1) :

Provided further that where the audit of the accounts of any wakf is made by the State Examiner of Local Funds or any other officer designated by the State Government in this behalf, the cost of such audit shall not exceed one and a half per cent of the net annual income of such wakf and such costs shall be met from the funds of the wakfs concerned.

48. Board to pass orders on auditor's report.—(1) The Board shall examine the auditor's report, and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders as it thinks fit including orders for the recovery of the amount certified by the auditor under sub-section (2) of section 47.

(2) The mutawalli or any other person aggrieved by any order made by the Board may, within thirty days of the receipt by him of the order, apply to the Tribunal to modify or set aside the order and the Tribunal may, after taking such evidence as it may think necessary, confirm or modify the order or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

49. *Sums certified to be due recoverable as arrears of land revenue.*—(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

50. *Duties of Mutawalli*—It shall be the duty of every mutawalli—

- (a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;
- (c) to allow inspection of wakf properties amounts or records or deeds and documents relating thereto ;
- (d) to discharge all public dues ; and
- (e) to do any other act which he is lawfully required to do by or under this Act.

51. *Alienation of wakf property without sanction of Board to be void*—(1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gifts, sale, exchange or mortgage is effected with the prior sanction of the Board :

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.

(2) The Board may, after publishing in the Official Gazette the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned mutawalli or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

- (i) necessary or beneficial to the wakf ;
- (ii) consistent with the objects of the wakf ;
- (iii) the consideration thereof is reasonable and adequate :

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed :

Provided further that the Tribunal may, on the application of the aggrieved mutawalli or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.

(3) The utilisation or investment of the amount realised by the sale or exchange mortgage of any property shall be made by the mutawalli subject to the approval of the Board and where any amount has been raised by mortgage of any such property, the mutawalli or other person shall make repayment of the mortgage-debt and obtain a discharge of the mortgage-debt from the mortgage within such reasonable time as the Board may specify.

(4) Every approval given by the Board under sub-section (3) shall be communicated to the mutawalli and shall also be published in the manner prescribed.

(5) The mutawalli or any other person having an interest in the wakf who is aggrieved by the decision given under sub-section (3), may, within ninety days from the date of communication to him of such decision or the publication of the decision, as the case may be, prefer an appeal to the Tribunal against such decision and, thereupon, the Tribunal may after giving the appellant and the Board, a reasonable opportunity of being heard, confirm modify or set aside such decision.

52. *Recovery of wakf property transferred in contravention of section 51.*—(1) If the Board is satisfied, after making any inquiry in such manner as may be prescribed, that any immovable property of a wakf entered as such in the register of wakf maintained under section 36, has been transferred without the previous sanction of the Board in contravention of the provisions of section 51, it may send a requisition to the Collector with in whose jurisdiction the property is situate to obtain and deliver possession of the property to it.

(2) On receipt of a requisition under sub-section (1), the Collector shall pass an order directing the person in possession of the property to deliver the property to the Board within a period of thirty days from the date of the service of the order.

(3) Every order passed under sub-section (2) shall be served—

(a) by giving or tendering the order, or by sending it by post to the person for whom it is intended ; or

(b) if such person cannot be found, by affixing the order on some conspicuous part of his last known place of abode or business, or by giving or tendering the order to some adult male member or servant of his family or by causing it to be affixed on some conspicuous part of the property to which it relates ;

Provided that where the person on whom the order is to be served is a minor, service upon his guardian or upon any adult male member or servant of his family shall be deemed to be the service upon the minor.

(4) Any person aggrieved by the order of the Collector under sub-section (2) may, within a period of thirty days from the date of the service of the order, prefer an appeal to the Tribunal within whose jurisdiction the property is situate and the decision of the Tribunal on such appeal shall be final.

(5) Where an order passed under sub-section (2) has not been complied with and the time for appealing against such order has expired without an appeal having been preferred or the appeal, if any preferred within that time has been dismissed, the Collector shall obtain possession of the property in respect of which the order has been made, using such force, if any, as may be necessary for the purpose and deliver it to the Board.

(6) In exercising his functions under this section the Collector shall be guided by such rules as may be provided by regulations.

53. *Restriction on purchase of property on behalf of wakf.*—Notwithstanding anything contained in a wakf deed, no immovable property shall be purchased for or on behalf of any wakf from the funds of any wakf except with the prior sanction of the Board, and the Board shall not accord such sanction unless it considers that the acquisition of such property is necessary or beneficial to the wakf and that the price proposed to be paid therefor is adequate and reasonable:

■ Provided that before such sanction is accorded, the particulars relating to the proposed transaction shall be published in the Official Gazette inviting objections and suggestions with respect thereto and, the Board shall, after considering the objections and suggestions that may be received by it from mutawallis or other persons interested in the wakf, make such orders as it may think fit.

54. *Removal of encroachment from wakf property.*—(1) Whenever the Chief Executive Officer considers whether on receiving any complaint or on his own motion that there has been an encroachment on any land, building, space or other property which is wakf property and, which has been registered as such under this Act, he shall cause to be served upon the encroacher a notice specifying the particulars of the encroachment and calling upon him to show cause before a date to be specified in such notice. as to why an order requiring him to remove the encroachment before the date so specified should not be made and shall also send a copy of such notice to the concerned mutawalli.

(2) The notice referred to in sub-section (1) shall be served in such manner as may be prescribed.

(3) If, after considering the objections, received during the period specified in the notice, and after conducting an inquiry in such manner as may be prescribed, the Chief Executive Officer is satisfied that the property in question is wakf property and that there has been an encroachment on any such wakf property, he may, by an order, require the encroacher to remove such encroachment and deliver possession of the land, building, space or other property encroached upon to the mutawalli of the wakf.

(4) Nothing contained in sub-section (3) shall prevent any person aggrieved by the order made by the Chief Executive Officer under that sub-section from instituting a suit in a Tribunal to establish that he has right, title or interest in the land, building, space or other property :

Provided that no such suit shall be instituted by a person who has been let into possession of the land, building, space or other property as a lessee, licensee or mortgagee by the mutawalli of the wakf or by any other person authorised by him in this behalf.

55. *Enforcement of orders made under section 54.*—Where the person, ordered under sub-section (3) of section 54 to remove any encroachment, omits or fails to remove such encroachment, within the time specified in the order or, as the case may be, fails to vacate the land, building, space or other property to which the order relates, within the time aforesaid, the Chief Executive Officer may apply to the Sub-divisional Magistrate within the local limits of whose jurisdiction the land, building, space or other property is situate for evicting the encroacher, and thereupon, such Magistrate shall make an order directing the encroacher to remove the encroachment, or, as the case may be, vacate the land, building, space or other property, and to deliver possession thereof to the concerned mutawalli and in default of compliance with the order, remove the encroachment or, as the case may be, evict the encroacher from the land, building, space or other property and may, for this purpose, take such police assistance as may be necessary.

56. *Restriction on power to grant lease of wakf property.*—(1) A lease or sub-lease for any period exceeding three years of any immovable property which is wakf property shall, notwith-

standing anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect.

(2) A lease or sub-lease for a period exceeding one year and not exceeding three years of any immovable property which is wakf property shall, notwithstanding anything contained in the deed or instrument of wakf or in any other law for the time being in force, be void and of no effect unless it is made with the previous sanction of the Board.

(3) The Board shall, in granting sanction for lease or sub-lease or renewal thereof under this section review the terms and conditions on which the lease or sub-lease is proposed to be granted or renewed and make its approval subject to the revision of such terms and conditions in such manner as it may direct.

57. Mutawalli entitled to pay certain costs from income of wakf property.—Notwithstanding anything contained in the wakf deed, every mutawalli may pay from the income of the wakf property any expenses properly incurred by him for the purpose of enabling him to furnish any particulars, documents or copies under section 36 or any accounts under section 46 or any information or documents required by the Board or for the purpose of enabling him to carry out the directions of the Board.

58. Power of Board to pay dues in case of default by mutawalli.—(1) Where a mutawalli refuses to pay or fails to pay any revenue, cess, rates or taxes due to the Government or any local authority, the Board may discharge dues from the Wakf Fund and may recover the amount so paid from the wakf property and may also recover damages not exceeding twelve and a half per cent of the amount so paid.

(2) Any sum of money due under sub-section (1) may, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

59. Creation of reserve fund.—For the purpose of making provisions for the payment of rent and of revenue, cess, rates and taxes due to the Government or any local authority, for the discharge of the expenses of the repair of the wakf property and for the preservation of the wakf property, the Board may direct the creation and maintenance, in such manner as it may think fit, of a reserve fund from the income of a wakf.

60. Extension of time.—The Board may, if it is satisfied that it is necessary so to do, extend the time within which any act is required to be done by the mutawalli under this Act.

61. Penalties.—(1) If a mutawalli fails to:—

(a) apply for the registration of a wakf ;

(b) furnish statements of particulars or accounts or returns as required under this Act ;

(c) supply information or particulars as required by the Board ;

(d) allow inspection of wakf properties, accounts, records or deeds and documents relating thereto ;

(e) deliver possession of any wakf property, if ordered by the Board or Tribunal ;

(f) carry out the directions of the Board ;

(g) discharge any public dues ; or

(h) do any other act which he is lawfully required to do by or under this Act,

he shall, unless he satisfies the court or the Tribunal that there was reasonable cause for his failure to be punishable with fine which may extend to eight thousand rupees.

(2) Notwithstanding anything contained in sub-section (1), if—

(a) a mutawalli omits or fails, with a view to concealing the existence of a wakf, to apply for its registration under this Act.—

(i) in the case of a wakf created before the commencement of this Act, within the period specified therefor in sub-section (8) of section 36 ;

(ii) in the case of any wakf created after such commencement, within three months from the date of the creation of the wakf; or

(b) a mutawalli furnishes any statement, return or information to the Board, which he knows or has reason to believe to be false, misleading, untrue or incorrect in any material particular,

he shall be punishable with imprisonment for a term which may extend to six months and also with fine which may extend to fifteen thousand rupees.

(3) No court shall take cognizance of an offence punishable under this Act save upon complaint made by the Board or an officer duly authorised by the Board in this behalf.

(4) No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(5) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) the fine imposed under sub-section (1), when realised, shall be credited to the Wakf Fund.

(6) In every case where offender is convicted after the commencement of this Act, of an offence punishable under sub-section (1) and sentenced to a fine, the court shall also impose such term of imprisonment in default of payment of fine as is authorised by law for such default.

62. *Mutawalli not to spend any money belonging to wakf for self defence.*—No mutawalli shall spend any money out of the funds of the wakf, of which he is the mutawalli, for meeting any costs, charges, or expenses which are or may be, incurred by him, in relation to any suit, appeal or any other proceeding for, or incidental to, his removal from office or for taking any disciplinary action against himself.

63. *Power to appoint mutawallis in certain cases.*—When there is a vacancy in the office of the mutawalli of a wakf and there is no one to be appointed under the terms of the deed of the wakf, or where the right of any person to act as mutawalli is disputed, the Board may appoint any person to act as mutawalli for such period and on such conditions as it may think fit.

64. *Removal of Mutawalli.*—(1) Notwithstanding anything contained in any other law or the deed of wakf, the Board may remove a mutawalli from his office if such mutawalli.—

(a) has been convicted more than once of an offence punishable under section 61 ; or

(b) has been convicted of any offence of criminal breach of trust or any other offence involving moral turpitude, and such conviction has not been reversed and he has not been granted full pardon with respect to such offence; or

- (c) is of unsound mind or is suffering from other mental or physical defect or infirmity which would render him unfit to perform the functions and discharge the duties of a mutawalli ;or
- (d) is an undischarged insolvent ;or
- (e) is proved to be addicted to drinking liquor or other spirituous preparations, or is addicted to the taking of any narcotic drugs ; or
- (f) is employed as a paid legal practitioner on behalf of, or against, the wakf; or
- (g) has, failed, without reasonable excuse, to maintain regular accounts for two consecutive years or has failed to submit, in two consecutive years, the yearly statement of accounts as required by sub-section (2) of section 46 ; or
- (h) is interested, directly or indirectly, in a subsisting lease in respect of any wakf property, or in any contract made with, or any work being done for, the wakf or is in arrears in respect of any sum due by him to such wakf ; or
- (i) continuously neglects his duties or commits any misfeasance, malfeasance, misapplication of funds or breach of trust in relation to the wakf or in respect of any money or other wakf property; or
- (j) wilfully and persistently disobeys the lawful orders made by the Central Government, State Government, Board under any provision of this Act or rule or order made thereunder;
- (k) misappropriates or fraudulently deals with the property of the Wakf.

(2) The removal of a person from the office of the mutawalli shall not affect his personal rights if any, in respect of the wakf property either as a beneficiary or in any other capacity or his right, if any, as a sajjadanashin.

(3) No action shall be taken by the Board under sub-section (1), unless it has held an inquiry into the matter in a prescribed manner and the decision has been taken by a majority of not less than two-thirds of the members of the Board.

(4) A mutawalli who is aggrieved by an order passed under any of the clauses (c) to (i) of sub-section (1), may, within one month from the date of the receipt by him of the order, appeal against the order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(5) Where any inquiry under sub-section (3) is proposed, or commenced, against any mutawalli, the Board may, if it is of opinion that it is necessary so to do in the interest of the wakf, by an order suspend such mutawalli until the conclusion of the inquiry:

Provided that no suspension for a period exceeding ten days shall be made except after giving the mutawalli a reasonable opportunity of being heard against the proposed action.

(6) Where any appeal is filed by the mutawalli to the Tribunal under sub-section (4), the Board may make an application to the Tribunal for the appointment of a receiver to manage the wakf pending the decision of the appeal, and where such an application is made, the Tribunal shall, notwithstanding anything contained in the Code of Civil Procedure, 1908, (5 of 1908) appoint a suitable person as receiver to manage the wakf and direct the receiver so appointed to ensure that the customary or religious rights of the mutawalli and of the wakf are safeguarded.

(7) Where a mutawalli has been removed from his office under sub-section (1), the Board may, by order, direct the mutawalli to deliver possession of the wakf property to the Board or any officer duly authorised in this behalf or to any person or committee appointed to act as the mutawalli of the wakf property.

(8) A mutawalli of a wakf removed from his office under this section shall not be eligible for re-appointment as a mutawalli of that wakf for a period of five years from the date of such removal.

65. *Assumption of direct management of certain wakfs by the Board.*—(1) Where no suitable person is available for appointment as a mutawalli of a wakf, or where the Board is satisfied, for reasons to be recorded by it in writing, that the filling up of the vacancy in the office of a mutawalli is prejudicial to the interests of the wakf, the Board may, by notification in the Office Gazette, assume direct management of the wakf for such period or periods, not exceeding five years in the aggregate, as may be specified in the notification.

(2) The State Government, may, on its own motion or on the application of any person interested in the wakf, call for the records of any case for the purpose of satisfying itself as to the correctness, legality or propriety of the notification issued by the Board under sub-section (1) and pass such orders as it may think fit and the order so made by the State Government shall be final and shall be published in the manner specified in sub-section (1).

(3) As soon as possible after the close of every financial year the Board shall send to the State Government a detailed report in regard to every wakf under its direct management, giving therein—

- (a) the details of the income of the wakf for the year immediately preceding the year under report ;
- (b) the steps taken to improve the management and income of the wakf ;
- (c) the period during which the wakf has been under the direct management of the Board and explaining the reasons as to why it has not been possible to entrust the management of the wakf to the mutawalli or any committee of management during the year ; and
- (d) such other matters as may be prescribed.

(4) The State Government shall examine the report submitted to it under sub-section (3), and after such examination issue such directions or instructions to the Board as it may think fit and the Board shall comply with such directions or instructions on receipt thereof.

66. *Powers of appointment and removal of mutawalli when to be exercised by the State Government.*—Whenever a deed of wakf or any decree or order of a court of any scheme of management of any wakf provides that a court or any authority other than a Board may appoint or remove a mutawalli or settle or modify such scheme of management or otherwise exercise superintendence over the wakf, then notwithstanding anything contained in such deed of wakf, decree, order or scheme, such powers aforesaid shall be exercisable by the State Government :

Provided that where a Board has been established, the State Government shall consult the Board before exercising such powers.

67. *Supervision and Super-Session of Committee of Management.*—(1) Whenever the supervision or management of a wakf is vested in any committee appointed by the wakf, then, notwithstanding anything contained in this Act, such committee shall continue to function until it is superseded by the Board or until the expiry of its term as may be specified by the wakf, whichever is earlier :

Provided that such committee shall function under the direction, control and supervision of the Board and abide by such directions as the Board may issue from time to time :

Provided further that if the Board is satisfied that any scheme for the management of a wakf by a committee is inconsistent with any provision of this Act or of any rule made thereunder or

with the directions of the wakf, it may, at any time, modify the scheme in such manner as may be necessary to bring it in conformity with the directions of the wakf or of the provisions of this Act and the rules made thereunder

(2) Notwithstanding anything contained in this Act and in the deed of the wakf, the Board may, if it is satisfied, for reasons to be recorded in writing, that a committee, referred to in sub-section (1) is not functioning properly and satisfactorily, or that the wakf is being mismanaged and that in the interest of its proper management, it is necessary so to do, by an order, supersede such committee, and, on such supersession, any direction of the wakf, in so far as it relates to the constitution of the committee, shall cease to have any force :

Provided that the Board shall, before making any order superseding any committee, issue a notice setting forth therein the reasons for the proposed action and calling upon the Committee to show cause within such time, not being less than one month, as may be specified in the notice, as to why such action shall not be taken.

(3) Every order made by the Board under sub-section (2) shall be published in the prescribed manner and on such publication shall be binding on the mutawalli and all persons having any interest in the wakf.

(4) Any order made by the Board under sub-section (2) shall be final :

Provided that any person aggrieved by the order made under sub-section (2) may, within sixty days from the date of the order, appeal to the Tribunal :

Provided further that the Tribunal shall have no power to suspend the operation of the order made by the Board pending such appeal.

(5) The Board shall, whenever it supersedes any committee under sub-section (2), constitute a new committee of management simultaneously with the order made by it under sub-section (2).

(6) Notwithstanding anything contained in the foregoing sub-sections the Board may, instead of superseding any committee under sub-section (2), remove any member thereof if it is satisfied that such member has abused his position as such member or had knowingly acted in a manner prejudicial to the interest of the wakf, and every such order for the removal of any member shall be served upon him by registered post :

Provided that no order for the removal of the member shall be made unless he has been given a reasonable opportunity of showing cause against the proposed action :

Provided further that any member aggrieved by any order for his removal from the membership of the committee may, within a period of thirty days from the date of service of the order on him, prefer an appeal against such order to the Tribunal and the Tribunal may, after giving a reasonable opportunity to the appellant and the Board of being heard, confirm, modify or reverse the order made by the Board and the order made by the Tribunal in such appeal shall be final.

(8. *Duty of mutawalli or committee to deliver possession of records, etc.*—(1) Where any mutawalli or committee of management has been removed by the Board in accordance with the provisions of this Act, or of any scheme made by the Board, the mutawalli or the committee so removed from the office (hereinafter in this section referred to as the removed mutawalli or committee) shall hand over charge and deliver possession of the records, accounts and all properties of the wakf (including cash) to the successor mutawalli or the successor committee, within one month from the date specified in the order.

(2) Where any removed mutawalli or committee fails to deliver charge or deliver possession of the records, accounts and properties (including cash) to the successor mutawalli or committee within the time specified in sub-section (1), or prevents or obstructs such mutawalli or committee, from obtaining possession thereof after the expiry of the period aforesaid, the successor mutawalli or any member of the successor committee may make an application, accompanied by a certified copy of the order appointing such successor mutawalli or committee, to any Magistrate of the first class within the local limits of whose jurisdiction any part of the wakf property is situated and, there-upon, such Magistrate may, after giving notice to the removed mutawalli or members of the removed committee, make an order directing the delivery of charge and possession of such records, accounts and properties (including cash) of the wakf to the successor mutawalli or the committee, as the case may be, within such time as may be specified in the order.

(3) Where the removed mutawalli or any member of the removed committee, omits or fails to deliver charge and possession of the records, accounts and properties (including cash) within the time specified by the Magistrate under sub-section (2), the removed mutawalli or every member of the removed committee, as the case may be, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

(4) Whenever any removed mutawalli or any member of the removed committee omits or fails to comply with the orders made by the Magistrate under sub-section (2), the Magistrate may authorise the successor mutawalli or committee to take charge and possession of such records, accounts, properties (including cash) and may authorise such person to take such police assistance as may be necessary for the purpose.

(5) No order of appointment of the successor mutawalli or committee, shall be called in question in the proceedings before the Magistrate under this section.

(6) Nothing contained in this section shall bar the institution of any suit in a competent civil court by any person aggrieved by any order made under this section, to establish that he has right, title and interest in the properties specified in the order made by the Magistrate under sub-section (2).

69. Power of Board to frame scheme for administration of wakf.—(1) Whenever the Board is satisfied, whether on its own motion or on the application of not less than five persons interested in any wakf, that it is necessary or desirable to frame a scheme for the proper administration of the wakf, it may by an order frame such scheme for the administration of the wakf, after consultation with the mutawalli or the applicant in the prescribed manner.

(2) A scheme framed under sub-section (1) may provide for the removal of the mutawalli of the wakf holding office as such immediately before the date on which the scheme comes into force :

Provided that where any such scheme provides for the removal of any hereditary mutawalli, the scheme shall also provide for the appointment of the person next in hereditary succession to the mutawalli so removed, as one of the members of the committee appointed for the proper administration of the wakf.

(3) Every order made under sub-section (2) shall be published in the prescribed manner, and, on such publication shall be final and binding on the mutawalli and all persons interested in the wakf :

Provided that any person aggrieved by an order made under this section may, within sixty days from the date of the order, prefer an appeal to the Tribunal and after hearing such appeal, the

Tribunal may confirm, reverse or modify the order :

Provided further that the Tribunal shall have no power to stay the operation of the order made under this section.

(4) The Board may, at any time by an order, whether made before or after the scheme has come into force, cancel or modify the scheme.

(5) Pending the framing of the scheme for the proper administration of the wakf, the Board may appoint a suitable person to perform all or any of the functions of the mutawalli thereof and to exercise the powers, and perform the duties, of such mutawalli.

70. *Inquiry relating to administration of wakf.*—Any person interested in a wakf may make an application to the Board supported by an affidavit to institute an inquiry relating to the administration of the wakf and if the Board is satisfied that there are reasonable grounds for believing that the affairs of the wakf are being mismanaged, it shall take such action thereon as it thinks fit.

71. *Manner of holding inquiry.*—(1) The Board may, either on an application received under section 73 or on its own motion,—

- (a) hold an inquiry in such manner as may be prescribed; or
- (b) authorise any person in this behalf to hold an inquiry into any matter relating to a wakf and take such action as it thinks fit.

(2) For the purposes of an inquiry under this section, the Board or any person authorised by it in this behalf, shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) for enforcing the attendance of witnesses and production of documents.

CHAPTER VII

FINANCE OF THE BOARD

72. *Annual contribution payable to Board.*—(1) The mutawalli of every wakf, the net annual income of which is not less than five thousand rupees, shall pay annually, out of the net annual income derived by the wakf, such contributions, not exceeding seven per cent. of such annual income, as may be prescribed, to the Board for the services rendered by such Board to the wakf.

Explanation.—1.—For the purposes of this Act, “net annual income” shall mean the gross income of the wakf from all sources, including nazars and offerings which do not amount to contributions to the corpus of the wakfs, in a year after deducting there from the following, namely:—

- (i) the land revenue paid by it to the Government;
- (ii) the rates, cesses, taxes and licence fees, paid by it to the Government or any local authority;
- (iii) expenditure incurred for all or any of the following purposes, namely :—
 - (a) maintenance of, or repairs to, irrigation works, which shall not include the capital cost of irrigation;
 - (b) seeds or seedlings;
 - (c) manure;
 - (d) purchase and maintenance of agricultural implements;
 - (e) purchase and maintenance of cattle for cultivation;

- (f) wages for ploughing, watering, sowing, transplanting, harvesting, threshing and other agricultural operations;

Provided that the total deduction in respect of an expenditure incurred under this clause shall not exceed ten per cent. of the income derived from lands belonging to the wakf;

- (iv) expenditure on sundry repairs to rented buildings, not exceeding five per cent of the annual rent derived therefrom, or the actual expenditure, whichever is less;
(v) sale proceeds of immovable properties or rights relating to, or arising out of immovable properties, if such proceeds are reinvested to earn income for the wakf ;

Provided that the following items of receipts shall not be deemed to be income for the purposes of this section, namely :—

- (a) advances and deposits recovered and loans taken or recovered;
(b) deposits made as security by employees, lessees or contractors and other deposits, if any;
(c) withdrawals from banks or of investments;
(d) amounts recovered towards costs awarded by courts;
(e) sale proceeds of religious books and publications where such sales are undertaken as an un-remunerative enterprise with a view to propagating religion;
(f) donations in cash or kind or offerings made by the donors as contribution to the corpus of the wakf ;

Provided that the interest on income, if any, accruing from such donations or offerings shall be taken into account in calculating the gross annual income ;

- (g) voluntary contributions received in cash or kind for a specific service to be performed by the wakf and expended on such service;
(h) audit recoveries.

Explanation II.—In determining, the net annual income for the purposes of this section, only the net profit derived by any wakf from its remunerative undertakings, if any, shall be taken as income, and in respect of its non-remunerative undertakings, such as, schools, colleges, hospitals, poor homes, orphanages or any other similar institutions, the grants given by the Government or any local authority or donations received from the public or fees collected from the pupils of educational institutins shall not be taken as income.

(2) The Board may in the case of any mosque or orphanage or any particular wakf reduce or remit such contribution for such time as it thinks fit.

(3) The mutawalli of a wakf may realise the contributions payable by him under sub-section (1) from the various persons entitled to receive any pecuniary or other matieral benefit from the wakf, but the sum realisable from any one of such persons shall not exceed such amount as shall bear to the total contribution payable the same proportion, as the value of the benefits receivable by such person bears to the entire net annual income of the wakf:

Provided that if there is any income of the wakf available in excess of the amount payable as dues under this Act, other than as the contribution under sub-section (1), and in excess of the amount payable under the wakf deed, the contribution shall be paid out of such income.

(4) The contribution payable under sub-section (1) in respect of a wakf shall, subject to the prior payment of any dues to the Government or any local authority or of any other statutory first charge on the wakf property of the income thereof, be a first charge on the income of the

wakf and shall be recoverable, on a certificate issued by the Board after giving the mutawalli concerned an opportunity of being heard, as an arrear of land revenue.

(5) If a mutawalli realises the income of the wakf and refuses to pay or does not pay such contribution, he shall also be personally liable for such contribution which may be realised from his person or property in the manner aforesaid.

(6) Where, after the commencement of this Act, the mutawalli of a wakf fails to submit a return of the net annual income of the wakf within the time specified therefor or submits a return which, in the opinion of the Chief Executive Officer is incorrect or false in any material particular, or which does not comply with the provisions of this Act or any rule or order made thereunder, the Chief Executive Officer may assess the net annual income of the wakf to the best of his judgment or revise the net annual income as shown in the return submitted by the mutawalli and the net annual income as so assessed or revised shall be deemed to be the net annual income of the wakf for the purposes of this section :

Provided that no assessment of net annual income or revision of return submitted by mutawalli shall be made except after giving a notice to the mutawalli calling upon him to show cause, within the time specified in the notice, as to why such assessment or revision of the return shall not be made and every such assessment or revision shall be made after considering the reply if any, given by the mutawalli.

(7) Any mutawalli who is aggrieved by the assessment or revision made by the Chief Executive Officer, under sub-section (6), may prefer an appeal to the Board within thirty from the date of the receipt of the assessment or revision of return and the Board may, after giving the appellant a reasonable opportunity of being heard, confirm, reverse or modify the assessment or revision or the return and the decision of the Board thereon shall be final.

(8) If, for any reason, the contribution or any portion thereof leviable under this section has escaped assessment in any year, whether before or after the commencement of this Act, the Chief Executive Officer, may, within five years from the last date of the year to which such escaped assessment relates serve upon the mutawalli a notice assessing him with the contribution or portion thereof which had escaped assessment, and demanding payment thereof within thirty days from the date of service of such notice, and the provisions of this Act and the rules made thereunder, shall, as far as may be, apply as if the assessments were made under this Act, in the first instance.

73. Power of Chief Executive Officer to direct banks or other person to make payments.—(1) Notwithstanding anything contained in any other law for the time being in force, the Chief Executive Officer, if he is satisfied that it is necessary and expedient so to do, make an order directing any bank in which, or any person with whom any money belonging to a wakf is deposited, to pay the contribution, leviable under section 72, out of such money, as may be standing to the credit of the wakf in such bank or may be deposited with such person, or out of the moneys which may, from time to time, be received by bank or other person for or on behalf of the wakf by way of deposit, and on receipt of such orders, the bank or the other person as the case may be, shall when no appeal has been preferred under sub-section (3), comply with such orders, or where an appeal has been preferred under sub-section (3), shall comply with the orders made by the Tribunal on such appeal.

(2) Every payment made by a bank or other person in pursuance of any order made under sub-section (1), shall operate as a full discharge of the liability of such bank or other person in relation to the sum so paid.

(3) Any bank or other person who is ordered under sub-section (1) to make any payment may, within thirty days from the date of the order, prefer an appeal against such order to the Tribunal and the decision of the Tribunal on such appeal shall be final.

(4) Every officer of the bank or other person who fails, without any reasonable excuse, to comply with the order made under sub-section (1), or, as the case may be, under sub-section (3), shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to eight thousand rupees, or with both.

74. Deduction of contribution from perpetual annuity payable to the wakf.—(1) Every authority empowered to disburse any perpetual annuity payable to a wakf under any law relating to the abolition of zamindaris or jagirs, or laying down land ceilings, shall on receipt of a certificate from the Chief Executive Officer, specifying the amount of contribution payable by the wakf under section 72 which remains unpaid, deduct before making payment of the perpetual annuity to the wakf, the amount specified in such certificate and remit the amount so deducted to the Chief Executive Officer.

(2) Every amount remitted under sub-section (1) to the Chief Executive Officer shall be deemed to be a payment made by the wakf and shall, to the extent of the amount so remitted, operate as a full discharge of the liability of such authority with regard to the payment of the perpetual annuity.

75. Power of Board to borrow.—(1) For the purpose of giving effect to the provisions of this Act, the Board, may, with the previous sanction of the State Government, borrow such sum of money and on such terms and conditions as the State Government may determine.

(2) The Board shall repay the money borrowed, together with any interest or costs due in respect thereof, according to the terms and conditions of the loan.

76. Mutawalli not to lend or borrow moneys without sanction.—(1) No mutawalli, Executive Officer or other person in charge of the administration of a wakf shall lend any money belonging to the wakf or any wakf property or borrow any money for the purposes of the wakf except with the previous sanction of the Board:

Provided that no such sanction is necessary if there is an express provision in the deed of wakf for such borrowing or lending, as the case may be.

(2) The Board may, while according sanction, specify any terms and conditions subject to which the person referred to in sub-section (1) is authorised by him to lend or borrow any money or lend any other wakf property.

(3) Where any money is lent or borrowed, or other wakf property is lent in contravention of the provisions of this section, it shall be lawful for the Chief Executive Officer,—

- (a) to recover an amount equal to the amount which has been so lent or borrowed, with interest due thereon, from the personal funds of the person by whom such amount was lent or borrowed;
- (b) to recover the possession of the wakf property lent in contravention of the provisions of this Act, from the person to whom it was lent, or from persons who claim title to such property through the person to whom such property was lent.

77. Wakf Fund.—(1) All moneys received or realised by the Board under this Act and all other moneys received as donations, benefactions or grants by the Board shall form a fund to be called the Wakf Fund.

(2) All moneys received by the Board, as donations, benefactions and grants shall be deposited and accounted for under a separate sub-head.

(3) Subject to any rules that may be made by the State Government in this behalf, the Wakf Fund shall be under the control of the Board, so, however, that the Wakf Fund under the control of common Wakf Board shall be subject to rules, if any, made in this behalf by the Central Government.

(4) The Wakf Fund shall be applied to,—

- (a) repayment of any loan incurred under section 75 and payment of interest thereon;
- (b) payment of the cost of audit of the Wakf Fund and the accounts of wakfs;
- (c) payment of the salary and allowances to the officers and staff of the Board;
- (d) payment of travelling allowance to the Chairperson, members of the Board;
- (e) payment of all expenses incurred by the Board in the performance of the duties imposed, and the exercise of the powers conferred, by or under this Act;
- (f) payment of all expenses incurred by the Board for the discharge of any obligation imposed on it by or under any law for the time being in force.

(5) If any balance remains after meeting the expenditure referred to in sub-section (4), the Board may use any portion of such balance for the preservation and protection of wakf properties or for such other purposes as it may deem fit.

78. Budget of Board.—(1) The Board shall in every year prepare, in such form and at such time as may be prescribed, a budget for the next financial year showing the estimated receipts and expenditure during that financial year and forward a copy of the same to the State Government.

(2) On receipt of the budget forwarded to it under sub-section (1), the State Government shall examine the same and suggest such alterations, corrections, or modifications to be made therein as it may think fit and forward such suggestions to the Board for its consideration.

(3) On receipt of the suggestions from the State Government the Board may make written representations to that Government with regard to the alterations, corrections or modifications suggested by that Government and the State Government shall, after considering such representations, communicate, within a period of three weeks from the date of receipt thereof, to the Board its final decision in relation to the matter and the decision of the State Government shall be final.

(4) On receipt of the decision of the State Government under sub-section (3), the Board shall incorporate in this budget all the alterations, corrections, modifications finally suggested by the State Government and the budget as so altered, corrected or modified, shall be the budget which shall be passed by the Board.

79. Accounts of Board.—The Board shall cause to be maintained such books of account and other books in relation to its accounts in such form and in such manner as may be provided by regulations.

80. Audit of accounts of Board.—(1) The accounts of the Board shall be audited and examined annually by such auditor as may be appointed by the State Government.

(2) The auditor shall submit his report to the State Government and the report of the auditor shall, among other things, specify whether the accounts of every wakf under the direct management of the Board have been kept separately and whether such accounts have been audited annually by the State Examiner of Local Funds and shall also specify all cases of irregular,

illegal or improper expenditure or of failure to recover money or other property caused by neglect or misconduct and any other matter which the auditor considers it necessary to report; and the report shall also contain the name of any person who, in the opinion of the auditor is responsible for such expenditure or failure and the auditor shall in every such case certify the amount of such expenditure or loss as due from such person.

(3) The cost of the audit shall be paid from the Wakf Fund.

81. *State Government to pass orders on auditor's report.*—The State Government shall examine the auditor's report and may call for the explanation of any person in regard to any matter mentioned therein, and shall pass such orders in the report as it thinks fit.

82. *Dues of Board to be recovered as arrears of land-revenue.*—(1) Every sum certified to be due from any person by an auditor in his report under section 80, be paid by such person within sixty days after the service of a demand notice by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board, after giving the person concerned an opportunity of being heard, be recovered as an arrear of land revenue.

CHAPTER VIII

JUDICIAL PROCEEDINGS

83. *Constitution of Tribunals, etc.*—(1) The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

(3) Where any application made under sub-section (1) relates to any wakf property which falls within the territorial limits of the jurisdiction of two or more Tribunal, such application may be made to the Tribunal within the local limits of whose jurisdiction the mutawalli or any one of the mutawallis of the wakf actual and voluntarily resides, carries on business or personally works for gain, and, where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter:

Provided that the State Government may, if it is of opinion that it is expedient in the interest of the wakf or any other person interested in the wakf or the wakf property it transfer such a application to any other Tribunal having jurisdiction of for the determination of the dispute, question or other matter relating to such wakf or wakf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the Tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) Every Tribunal shall consist of one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, and the appointment of every such person may be made either by name or by designation.

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908, (5 of 1908) while trying a suit, or executing a decree or order.

(6) Notwithstanding anything contained in the Code of Civil Procedure, 1908, (5 of 1908) the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The Execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908. (5 of 1908.)

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal :

Provided that a High Court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such other order as it may think fit.

84. *Tribunal to hold proceedings expeditiously and to furnish to the parties copies of its decision.*—Whenever an application is made to a Tribunal for the determination of any dispute question or other matter relating to a wakf or wakf property it shall hold its proceedings as expeditiously as possible and shall as soon as practicable, on the conclusion of the hearing of such matter give its decision in writing and furnish a copy of such decision to each of the parties to the dispute.

85. *Bar of jurisdiction of civil courts.*—No suit or other legal proceeding shall lie in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

86. *Appointment of a receiver in certain cases.*—Notwithstanding anything contained in the Code of Civil Procedure, 1908, (5 of 1908), or in any other law for the time being in force, where any suit or other legal proceeding is instituted or commenced,—

(a) by or on behalf of a Board,—

(i) to set aside the sale of any immovable property, which is wakf property, in execution of a decree or order of a civil court;

(ii) to set aside the transfer of any immovable property, which is wakf property, made by the mutawalli thereof, whether for valuable consideration or not, without or otherwise than in accordance with, the sanction of the Board;

- (iii) to recover possession of the property referred to in clause (a) or clause (b) or to restore possession of such property to the mutawalli of the concerned wakf; or
- (b) by a mutawalli to recover possession of immovable property, which is wakf property, which has been transferred by a previous mutawalli, whether for valuable consideration or not, without otherwise than in accordance with the sanction of the Board, and which is in the possession of the defendant.

the court may, on the application of the plaintiff, appoint a receiver of such property and direct such receiver to pay from time to time to the plaintiff, out of the income of the property, such amount as the court may consider to be necessary for further prosecution of the suit.

87. Bar to the enforcement of right on behalf of unregistered wakfs.—(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit appeal or other legal proceeding shall be continued, heard, tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

(2) The provisions of sub-section (1) shall apply as far as may be, to the claim for set-off or any other claim made on behalf of any wakf which has not been registered in accordance with the provisions of this Act.

88. Bar to challenge the validity of any notification, etc.—Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central Government or the State Government under this Act or any rule made there under shall be questioned in any civil court.

89. Notice of suits parties against Board.—No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and plaint shall contain a statement that such notice has been so delivered or left.

90. Notice of suits, etc. by courts.—(1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.

(2) Whenever any wakf property is notified for sale in execution of a decree of a civil court or for the recovery of any revenue, cess, rates of taxes due to the Government or any local authority, notice shall be given to the Board, by the court, Collector or other person under whose order the sale is notified.

(3) In the absence of a notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board, within one month of its coming to know of such suit or proceeding, applies to the court in this behalf.

(4) In the absence of a notice under sub-section (2), the sale shall be declared void, if the Board, within one month of its coming to know of the sale, applies in this behalf to the court or other authority under whose order the sale was held.

91. Proceedings under Act 1 of 1894.—(1) If, in the course of proceedings under the Land Acquisition Act, 1894 or under any law for the time being in force relating to the acquisition of land or other property, it appears to the Collector before an award is made that any property under acquisition is wakf property, a notice of such acquisition shall be served by Collector on the Board and further proceedings shall be stayed to enable the Board to appear and plead as a party to the proceeding at any time within three months from the date of the receipt of such notice.

Explanation.—The reference to the Collector in the foregoing provisions of this sub-section shall, in relation to any other law referred to therein, be construed, if the Collector is not the competent authority under such other law to make an award of the compensation or other amount payable for acquisition of land or other property thereunder, as a reference to the authority under such other law competent to make such award.

(2) Where the Board has reason to believe that any property under acquisition is wakf property, it may at anytime before the award is made appear and plead as a party to the proceeding.

(3) When the Board has appeared under the provisions of sub-section (1) or sub-section (2) no order shall be passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard.

(4) Any order passed under section 31 or section 32 of the Land Acquisition Act, 1894 or under the corresponding provisions of the other law referred to in sub-section (1) without giving an opportunity to the Board to be heard, shall be declared void if the Board, within one month of its coming to know of the order, applies in this behalf to the authority which made the order.

92. Board to be party to suit or proceeding.—In any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding.

93. Bar to compromise of suits by or against mutawallis.—No suit or proceeding in any court by or against the mutawalli of a wakf relating to title to wakf property or the rights of the mutawalli shall be compromised without the sanction of the Board.

94. Power to make application to the Tribunal in case of failure of mutawalli to discharge his duties.—(1) Where a mutawalli is under an obligation to perform any act which is recognised by Muslim law as pious, religious or charitable and the mutawalli fails to perform such act, the Board may apply to the Tribunal for an order directing the mutawalli to pay to the Board or to any person authorised by the Board in this behalf the amount necessary for the performance of such act.

(2) Where a mutawalli is under an obligation to discharge any other duties imposed on him under the wakf and the mutawalli wilfully fails to discharge such duties, the Board or any person interested in the wakf may make an application to the Tribunal and the Tribunal may pass such order thereon as it thinks fit.

95. Power of appellate authority to entertain appeal after expiry of specified period.—Where under this Act any period has been specified for the filing of any appeal, the appellate authority may, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within the period so specified, entertain the appeal after the expiry of the said period.

CHAPTER IX

MISCELLANEOUS

96. Power of Central Government to regulate secular activities of wakfs.—(1) For the purpose of regulating the secular activities of wakfs, the Central Government shall have the following powers and functions, namely :—

- (a) to lay down general principles, and policies of wakf administration in so far as they relate to the secular activities of the wakfs;
- (b) to co-ordinate the functions of the Central Wakf Council and the Board, in so far as they relate to their secular functions;
- (c) to review administration of the secular activities of wakfs generally and to suggest improvements if any.

(2) In exercising its powers and functions under sub-section (1), the Central Government may call for any periodic or other reports from any Board and may issue to the Board such directions as it may think fit and the Board shall comply with such directions.

Explanation.—For the purposes of this section “secular activities” shall include social, economic, educational and other welfare activities.

97. Directions by State Government.—Subject to any directions issued by the Central Government under section 96, the State Government may, from time to time, given to the Board such general or special directions, as the State Government thinks fit and in the performance of its functions, the Board shall comply with such directions.

98. Annual report by State Government.—As soon as may be after the close of a financial year, the State Government shall cause a general annual report on the working and administration of the State Wakf Board and the Administration of wakfs in the State during that year to be prepared and laid before each House of the State Legislature where it consists of two Houses, or where such Legislature consists of one House, before that House, and every such report shall be in such form and shall contain such matters as may be provided by regulations.

99. Power to supersede Board.—(1) If the State Government is of opinion that the Board is unable to perform or has persistently made default in the performance of, the duty imposed on it by or under this Act or has exceeded or abused its powers, or has wilfully and without sufficient cause failed to comply with any direction issued by the Central Government under section 96 or if the State Government under section 97, or if the State Government is satisfied on consideration of any report submitted after annual inspection, that the Board's continuance is likely to be injurious to the interests of the wakfs in the State, the State Government may, by notification in the Official Gazette, supersede the Board for a period not exceeding six months :

Provided, that before issuing a notification under this sub-section, the State Government shall give a reasonable time to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1) superseding the Board.—

- (a) all the members of the Board shall, as from the date of supersession, vacate their offices as such members ;

(b) all the powers and duties which may, by or under the provisions of this Act, be exercised or performed by or on behalf of the Board shall, during the period of supersession, be exercised and performed by such person or persons as the State Government may direct; and

(c) all property vested in the Board shall, during the period of supersession vest in the State Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the State Government may—

(a) extend the period of supersession for such period as it may consider necessary ;or

(b) reconstitute the Board in the manner provided in section 14

100. *Protection of action taken in good faith.*—No suit or other legal proceeding shall lie against the Board or Chief Executive Officer or Survey Commissioner or any other person duly appointed under this Act in respect of anything which is in good faith done or intended to be done under this Act.

101. *Survey Commissioner, members and officers of the Board deemed to be public servants.*—(1) The Survey Commissioner, members of the Board, every officer, every auditor of the Board and every other person duly appointed to discharge any duties imposed on him by this Act or any rule or order made thereunder, shall be deemed to be public servants within the meaning of section 21 (45 of 1860) of the Indian Penal Code.

(2) Every mutawalli of a wakf, every member of managing committee, whether constituted by the Board or under any deed of wakf, every Executive Officer and every person holding any office in a wakf shall also be deemed to be public servant within the meaning of section 21 (45 of 1860) of the Indian Penal Code.

102. *Special provision for reorganisation of certain Boards.*—(1) Where on account of the reorganisation of States under any law providing reorganisation of States, the whole or any part of a State in respect of which a Board was, immediately before the day of such reorganisation, functioning has been transferred on that day to another State and by reason of such transfer, it appears to the Government of a State in any part of which the Board is functioning that the Board should be dissolved or that it should be reconstituted as an Intra-State Board for the whole or any part of that State, the State Government may frame a scheme or such dissolution or such reconstitution including proposals regarding the transfer of the assets, rights and liabilities of the Board to any other Board or State Government and the transfer or re-employment of employees of the Board and forward the scheme to the Central Government.

(2) On receipt of a scheme forwarded to it under sub-section (1), the Central Government may, after consulting the State Governments concerned approve the scheme with or without modifications and give effect to the scheme so approved by making such order as it thinks fit.

(3) An order under sub-section (2) may provide for all or any of the following matters namely:—

(a) the dissolution of the Board;

(b) the reconstitution in any manner whatsoever of the Board including the establishment, where necessary, of a new Board.

(c) the area in respect of which the reconstituted Board or new Board shall function and operate ;

- (d) the transfer, in whole or in part, of the assets, rights and liabilities of the Board (including the rights and liabilities under any contract made by it) to any other Board or State Government and the terms and conditions of such transfer ;
- (e) the substitution of any such transferee for the Board, or the addition of any such transferee, as a party to any legal proceeding to which the Board is a party; and the transfer of any proceeding pending before the Board to any such transferee;
- (f) the transfer or re-employment of any employee of the Board to or by, any such transferee and subject to the provisions of law providing for the reorganisation of the concerned State, the terms and conditions of service applicable to such employees after such transfer or re-employment; and
- (g) such incidental, consequential and supplemental matters as may be necessary to give effect to the approved scheme.

(4) Where an order is made under this section transferring the assets, rights and liabilities of any Board, then, by virtue of that order, such assets, rights and liabilities of the Board shall vest in, and be the assets, rights and liabilities of, the transferee.

(5) Every order made under this section shall be published in the Official Gazette.

(6) Every order made under this section shall be laid before each House of Parliament, as soon as may be, after it is made.

103. Special provision for establishment of Board for part of a State.—(1) Where on account of the territorial changes brought about by any law providing for the reorganisation of any State, this Act is as from the date on which that law comes into force applicable only to any part or parts of a State but has not been brought into force in the remaining part thereof, then notwithstanding anything contained in this Act, it shall be lawful for the Government of the State to establish one or more Boards for such part or parts in which this Act is in force and in such a case any reference in this Act to the word "State" in relation of a Board shall be construed as a reference to that part of the State for which the Board is established.

(2) Where any such Board has been established and it appears to the Government of the State that a Board should be established for the whole of the State, the State Government may, by order notified in the Official Gazette dissolve the Board established for the part of the State or reconstitute and reorganise such Board or establish a new Board for the whole of the State and thereupon, the assets, rights and liabilities of the Board for the part of the State shall vest in and be the assets, rights and liabilities of the reconstituted Board or the new Board, as the case may be.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain wakf.—Notwithstanding anything contained on this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a wakf being,—

- (a) a mosque, idgah, imambara, dargah, Khangah or a maqbara ;
- (b) a Muslim graveyard ;
- (c) a choultry or a musafarhkhana.

then such property shall be deemed to be comprised in that wakf and be dealt in the same manner as the wakf in which it is so comprised.

105. *Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.*—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a wakf or any immovable property, which is wakf property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

106. *Powers of Central Government to constitute common Boards.*—(1) Where the Central Government is satisfied that by reasons of —

- (i) the smallness of the Muslim population in two or more States;
- (ii) the slender resources of the Wakfs in such States; and
- (iii) the disproportion between the number and income of the wakfs and the Muslim population in such States.

it is expedient in the interest of the wakfs in the States and the Muslim population of such States, to have, instead of separate Boards for each of such States, a common Board, it may, after consultation with the Government of each of the concerned States, establish, by notification in the Official Gazette, a common Board for such States as it may deem fit, and may, by the same or any subsequent notification specify the place at which the principal office of such common Board shall be located.

(2) Every common Board established under sub-section (1) shall, as far as practical be, consist of the persons specified in sub-section (1) or, as the case may be, sub-section (7) of section 14.

(3) Whenever any common Board is established under sub-section (1).—

- (a) all powers vested in the State Government under any deed of wakf or any provision of law for the time being in force relating to wakfs, shall stand transferred in, the Central Government and, thereupon, references in such deed of wakf or law to the State Government shall be construed as references to the Central Government:

Provided that while establishing a common Board for two or more States, the Central Government shall ensure that at least one representative of each of the concerned is included as a member of the Board ;

- (b) references in this act to a State shall be construed as references to each of the States for which the common Board has been established ;
- (c) the Central Government may, without prejudice to any rule applicable to a Board in a State, make, by notification in the Official Gazette, rules regulating the conduct of business by and affairs of, the common Board.

(4) The common Board shall be a body corporate, with objects not confined to one State, having perpetual succession and a common seal with power to acquire and hold property and to transfer any such property, subject to such conditions and restructuons as may be specified by the Central Government, and shall by the said name sue or be sued.

107. *Act 36 of 1963 not to apply for recovery of wakf properties.*—Nothing contained in the Limitation Act, 1963 (36 of 1963) shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.

108. *Special provision as to evacuee wakf properties.*—The provisions of this Act shall apply, and shall be deemed always to have applied, in relation to any evacuee property within the meaning of clause (f) of section 2 of the Administration of Evacuee Property Act, 1950 (31 of 1950), which immediately before it became such evacuee property within the said meaning was property comprised in any wakf and, in particular any entrustment (whether by transfer of any documents or in any other manner and whether generally or for specified purpose) of any such property to a Board made before the commencement of this Act in pursuance of the instructions of the Custodian under the Administration of Evacuee Property Act, 1950 shall have, and shall be deemed always to have had, notwithstanding anything contained in any other provision of this Act, effect as if such entrustment had operated to—

- (a) vest such property in such Board in the same manner and with the same effect as in a trustee of such property for the purposes of sub-section (1) of section 11 of the Administration of Evacuee Property Act, 1950 (31 of 1950) with effect from the date of such entrustment, and
- (b) authorise such Board to assume direct management of the wakf concerned for so long as it might deem necessary.

109. *Power to make rules.*—(1) The State Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act, other than those of Chapter III.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for all or any of the following matters, namely,—

- (i) other particulars which the report of the Survey Commissioner may contain, under clause (f) of sub-section (3) of section (4);
- (ii) any other matter under clause (f) of sub-section (4) of section 4;
- (iii) the particulars which a list of Wakfs published under sub-section (2) of section 5, may contain;
- (iv) the manner of election of members of the Board by means of a single transferable vote, under sub-section (2) of section 14;
- (v) the terms and conditions of service of the Chief Executive Officer under sub-section (2) of section 23;
- (vi) the conditions and restrictions subject to which the Chief Executive Officer or any other officer may inspect any public office, records or registers under section 29;
- (vii) the conditions subject to which an Executive Officer and supporting staff may be appointed under sub-section (1) of section 38;
- (viii) the manner in which an inquiry may be held by the Chief Executive Officer under sub-section (1) of section 39;
- (ix) the form in which, and the time within which, a separate budget for Wakfs under the direct management of the Board shall be prepared under sub-section (1) of section 45;
- (x) the interval at which accounts of Wakfs may be audited in pursuance of the provisions of sub-section (1) of section 47;
- (xi) the time within which, the sale of any property is to be informed under the first proviso to sub-section (2) of section 51 and the manner in which the approval given under sub-section (3) of that section shall be published;
- (xii) the guidance subject to which the Collector shall recover the property transferred in contravention of the provisions of this Act, under section 52;
- (xiii) the manner of service of notice issued under sub-section (1) of section 54 and the manner in which any inquiry is to be made under sub-section (3) of that section;
- (xiv) the manner in which any inquiry may be held under section 64 or section 71;
- (xv) the other matters which may be specified in the report submitted under sub-section (3) of section 65;

- (xvi) the manner of publication of order made under sub-section (2) of section 67 ;
- (xvii) the manner in which consultation may be made with mutawalli under sub-section (1) of section 69 ;
- (xviii) the manner of publication of order made under sub-section (3) of section 69 ;
- (xix) the rate at which contribution is to be made by a mutawalli under section 72 ;
- (xx) the payment of moneys into the Wakf Fund, the investment, the custody and disbursement of such moneys under section 77 ;
- (xxi) the form in which, and the time within, the budget of the Board may be prepared and submitted under section 78 ;
- (xxii) the time within which application is to be made to the Tribunal under sub-section (2) of section 83 ;
- (xxiii) the procedure which the tribunal shall follow under sub-section (6) of section 83 ;
- (xxiv) the form in which the annual report is to be submitted and the matters which such report shall contain under section 98; and
- (xxv) any other matter which is required to be, or may be, prescribed.

110. *Powers to make regulations by the Board.*—(1) The Board may, with the previous sanction of the State Government, make regulations not inconsistent with this Act or the rules made thereunder, for carrying out its functions under this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters, namely:—

- (a) the time and places of the meetings of the Board under sub-section (1) of section 17 ;
- (b) the procedure and conduct of business at the meetings of the Board ;
- (c) the constitution and functions of the committees and the Board and the procedure for transaction of business at the meetings of such committees ;
- (d) the allowances or fees to be paid to the Chairperson or members of the Board or members of committees ;
- (e) the terms and conditions of service of the officers and other employees of the Board under sub-section (2) of section 24 ;
- (f) the forms of application for registration of Wakfs further particulars to be contained therein and the manner and place of registration of Wakfs under sub-section (3) of section 36 ;
- (g) further particulars to be contained in the register of Wakfs under section 37 ;
- (h) the form in which, and the time within which, the budget of Wakfs may be prepared and submitted by the Mutawalli and approved by the Board under sub-section (1) of section 44 ;
- (i) the books of accounts and other books to be maintained by the Board under section 79 ;
- (j) fees payable for inspection of proceedings and records of the Board or for issue of copies of the same ;
- (k) persons by whom any order or decision of the Board may be authenticated; and
- (l) any other matter which has to be, or may be, provided by regulations.

(3) All regulations made under this section shall be published in the Official Gazette and shall have effect from the date of such publication.

111. *Laying of rules and regulations before State Legislature.*—Every made under section 109 shall be laid, as soon as may be after it is made, before the State Legislature.

112. *Repeal and savings.*—(1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Act shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If, immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed :

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken.

113. *Power of remove difficulties.*—(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, not inconsistent with the provisions of this Act, remove the difficulty :

Provided that no such order shall be made after the expiry of the period of two years from the commencement of this Act.

(2) However, order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

THE TECHNOLOGY DEVELOPMENT BOARD ACT, 1995

Assented to on 16-12-1995

Act No. 44 of 1995

THE TECHNOLOGY DEVELOPMENT BOARD ACT, 1995

AN

ACT

to provide for the constitution of a Board for payment of equity capital or any other financial assistance to industrial concerns and other agencies attempting development and commercial application of indigenous technology or adapting imported technology to wider domestic applications and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. *Short title and commencement.*—(1) This Act may be called the Technology Development Board Act, 1995.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “Board” means the Technology Development Board constituted under sub-section(1) of section 3 ;

- (b) "Chairperson" means the Chairperson of the Board ;
- (c) "Fund" means the Fund for Technology Development and Application constituted under sub-section (1) of section 9 ;
- (d) "member" means a member of the Board and includes the Chairperson ;
- (e) "prescribed" means prescribed by rules made under this Act ;
- (f) "Secretary" means the Secretary of the Board appointed under sub-section (1) of section 4 ;
- (g) words and expressions used herein and not defined but defined in the Research and Development Cess Act, 1986 (32 of 1986) shall have the meaning respectively assigned to them in that Act.

CHAPTER II

TECHNOLOGY DEVELOPMENT BOARD

3. *Constitution and incorporation of the Board.*—(1) The Central Government shall by notification in the Official Gazette, constitute, for the purposes of this Act, a Board to be called the Technology Development Board.

(2) The Board shall be a body corporate by the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to contract and shall, by the said name, sue and be sued.

(3) The Board shall consist of the following members, namely:—

- (a) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Science and Technology ..*ex officio*
Chairperson;
- (b) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Scientific and Industrial Research ..*ex officio*;
- (c) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Finance (Expenditure) ..*ex-officio*;
- (d) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Defence Research and Development ..*ex officio* ;
- (e) the Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Industrial Development ..*ex officio*;
- (f) The Secretary to the Government of India incharge of the Ministry or Department of the Central Government dealing with Rural Development ..*ex officio* ;

(g) such number of persons, not exceeding four as may be prescribed to be appointed by the Central Government from amongst persons having experience in technology development and application, banking and finance industry, agriculture and rural development ; and ..ex officio;

(h) Secretary of the Board ..ex officio.

(4) the term of office and other conditions of service of members specified in clause (g) of sub-section (3) shall be such as may be prescribed.

(5) The Chairperson shall, in addition to presiding over the meetings of the Board, exercise and discharge such powers and duties of the Board as may be delegated to him by the Board and such other powers and duties as may be prescribed.

(6) No act or proceeding of the Board shall be invalidated merely by reason of—

- (a) any vacancy in, or any defect in the constitution of, the Board ;
- (b) any defect in the appointment of a person acting as a member of the Board ;
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

4. *Secretary and other officers and employees of the Board.*—(1) The Board may appoint the Secretary and such other officers and employees as it considers necessary for the efficient discharge of its functions under this Act.

(2) The terms and conditions of service of the Secretary and other officers and employees of the Board shall be such as may be determined by regulations.

5. *Committees of the Board.*—(1) Subject to the rules made in this behalf, the Board may appoint such committees as may be necessary for the efficient discharge of its duties and performance of its functions under this Act.

(2) The Board shall have the power to co-opt as members of any committee appointed under sub-section (1) such number of persons who are not members of the Board as it may think fit, and the person so co-opted shall have the right to attend the meetings of the committee, and take part in the proceedings of the committee, but shall not have the right to vote.

6. *Functions of the Board.*—The Board may—

- (a) provide equity capital, subject to such conditions as may be determined by regulations, or any other financial assistance to industrial concerns and other agencies attempting commercial application of indigenous technology and adapting imported technology of domestic wider applications ;
- (b) provide financial assistance to such research and development institution engaged in developing indigenous technology or adaptation of imported technology for commercial application, as may be recognised by the Central Government ;
- (c) perform such other functions as may be entrusted to it by the Central Government.

CHAPTER III

APPLICATION FOR GRANT OF FINANCIAL ASSISTANCE

7. *Application for grant of financial assistance, etc.*—(1) An application for grant of financial assistance for the purposes mentioned under section 6 shall be made to the Board in such form as may be prescribed.

(2) The Board may, after examining the application and after making such enquiries as it deems necessary by order in writing, either grant the financial assistance or refuse to grant the same :

Provided that no refusal of grant shall be made unless an opportunity is given to the applicant of being heard.

CHAPTER IV

FINANCE ACCOUNTS AND AUDIT

8. *Grants and loans by the Central Government.*—The Central Government may, after due appropriation made by Parliament by law, in this behalf, make to the Board grants and loans of such sums of money as that Government may consider necessary.

9. *Fund for Technology Development and Application.*—(1) There shall be constituted a Fund to be called the Fund for Technology Development and Application and there shall be credited to the Fund—

- (a) any grants and loans made to the Board by the Central Government under section 8 ;
- (b) all sums received by the Board from any other source :
- (c) recoveries made of the amounts granted from the Fund ; and
- (d) any income from investment of the amount of the Fund.

(2) The Fund shall be applied for meeting—

- (a) expenses on the objects and for the purposes authorised by this Act ;
- (b) salaries, allowances and other expenses of officers and other employees of the Board; and
- (c) expenses of the Board in the discharge of its functions under this Act.

10. *Transfer of money receipts and liabilities.*—On and from the commencement of this Act,—

- (a) the moneys standing at the credit of the Venture Capital Fund formed under section 5 of the Research and Development Cess Act, 1986 (32 of 1986) which is part of the Development Assistance Fund established by the Development Bank under section 14 of the Industrial Development Bank of India Act, 1964 (18 of 1964) shall stand transferred to and vest in the Board ;
- (b) all sums of money due to the Development Bank immediately before such commencement shall be deemed to be due to the Board ;
- (c) all debts, obligations and liabilities incurred, all contracts or agreements entered into and all matters and things engaged to be done by, with or for the Development Bank immediately before such commencement for or in connection with the purpose of the Venture Capital Fund shall be deemed to have been incurred, entered into or engaged to be done by with or for the Board; and
- (d) all suits and other legal proceedings instituted or which could have been instituted by or against the Development Bank immediately before such commencement may be continued or instituted by or against the Board.

11. Budget.—The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its budget for the next financial year, showing the estimated receipts and expenditure of the Board and forward the same to the Central Government.

12. Annual Report.—The Board shall prepare, in such form and at such time in each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year, and submit a copy thereof to the Central Government.

13. Accounts and audit.—(1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government in consultation with the Comptroller and Auditor-General of India.

(2) The Comptroller and Auditor-General of India or any other person appointed by him in connection with the auditing of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General of India has in connection with the auditing of the Government accounts and, in particular, shall have the right to demand the production of books accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board under this Act.

(3) The accounts of the Board shall be audited by the Comptroller and Auditor-General of India annually and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General of India.

(4) The Board shall furnish to the Central Government before such date as may be prescribed its audited copy of accounts together with auditor's report.

14. Annual Report and auditors report to be laid before Parliament.—The Central Government shall cause the annual report and auditor's report to be laid, as soon as may be after they are received, before each House of Parliament.

CHAPTER V

MISCELLANEOUS

15. Return to be furnished to the Board.—(1) An industrial concern or an institution receiving financial assistance from the Board shall furnish returns to the Board in such time as may be determined by regulations.

(2) The Board may authorise an officer to visit any industrial concern or institution referred to in sub-section (1) at any time to verify the accuracy of any return made under this section.

16. Power of the Central Government to issue directions.—(1) Without prejudice to the foregoing provisions of this Act, the Board shall, in the discharge of its functions and duties under this Act, be bound by such directions on questions of policy as the Central Government may give in writing to it from time to time:

Provided that the Board shall, as far as practicable, be given an opportunity to express its views before any direction is given under this sub-section.

(2) The decision of the Central Government whether a question is one of the policy or not shall be final.

17. *Power of Central Government to supersede the Board.*—(1) If at any time the Central Government is of opinion—

- (a) that on account of grave emergency, the Board is unable to discharge the functions and the duties imposed on it by or under the provisions of this Act; or
- (b) that the Board has persistently made default in complying with any direction issued by the Central Government under this Act or in the discharge of the functions and duties imposed on it by or under the provisions of this Act and as a result of such default the financial position of the Board or the administration of the Board has deteriorated ; or

(c) that circumstances exist which render it necessary in the public interest so to do,

the Central Government may, by notification in the Official Gazette, supersede the Board for such period, not exceeding six months, as may be specified in the notification.

(2) Upon the publication of a notification under sub-section (1) superseding the Board,—

- (a) all the members shall, as from the date of supersession, vacate their offices as such;
- (b) all the powers, functions and duties which may, by or under the provisions of this Act, be exercised or discharged by or on behalf of the Board shall, until the Board is reconstituted under sub-section (3), be exercised and discharged by such person or persons as the Central Government may direct; and
- (c) all property owned or controlled by the Board shall, until the Board is reconstituted under sub-section (3), vest in the Central Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Central Government may reconstitute the Board by a fresh appointment and in such case any person or persons who vacated their offices under clause (a) sub-section (2), shall not be deemed to be disqualified for appointment :

Provided that the Central Government may, at any time, before the expiration of the period of supersession, take action under this sub-section.

(4) The Central Government shall cause a notification issued under sub-section (1) and a full report of any action taken under this section and the circumstances leading to such action to be laid before each House of Parliament at the earliest.

18. *Delegation.*—The Board may, by general or special order in writing, delegate to the Chairperson or any other member or to any officer of the Board, subject to such conditions and limitations, if any, as may be specified in the order, such of its powers and functions under this Act (except the power under section 22) as it may deem necessary.

19. *Members, officers and employees of the Board to be public servants.*—All members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).

20. *Protection of action taken in good faith.*—No prosecution or other legal proceeding shall lie against the Government, or the Board or any committee appointed by it or any member of the Board or such committee, or any officer or employee of the Government or the Board or any other person authorised by the Government or the Board, for anything

which is in good faith done or intended to be done under this Act or the rules or regulations made thereunder.

21. Power of Central Government to make Rules.—(1) The Central Government may, by notification in the Official Gazette make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the forgoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the number of members of the Board under clause (g) of sub-section (3) of section 3;
- (b) the term of office and other conditions of service of the members of the Board, under sub-section (4) of section 3;
- (c) the powers and duties of the Chairperson under sub-section (5) of section 3;
- (d) the constitution of committees under sub-section (1) of section 5;
- (e) the form of application under sub-section (1) of section 7;
- (f) the form in which and the time at which the Board shall prepare its budget under section 11 and its annual report under section 12;
- (g) the form of annual statement of accounts under sub-section (1) of section 13 and the date before which the audited copy of the accounts may be furnished to the Central Government under sub-section (4) of that section;
- (h) any other matter which is to be or may be prescribed or in respect of which provision is to be or may be, made by rules.

22. Power of Board to make regulations.—(1) The Board may, with the previous approval of the Central Government, by notification in the Official Gazette, make regulations consistent with this Act and the rules generally to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the terms and conditions of service of the Secretary and other officers and employees of the Board under sub-section (2) of section 4;
- (b) the conditions subject to which equity capital may be provided by the Board under clause (a) of section 6;
- (c) the form in which and the time at which the returns may be furnished to the Board under sub-section (1) of section 15.

23. Rules and regulations to be laid before Parliament.—Every rule and every regulation made this Act shall be laid as soon as may be after it is made, before each House of Parliament, under while it is in session for a totoal period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions afore:aid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.

THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION
OF RIGHTS AND FULL PARTICIPATION) ACT, 1995

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THE PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION ACT,) 1995

(AS PASSED BY THE HOUSE OF PARLIAMENT)

AN

ACT

to give effect to the Proclamation on the Full Participation and Equality of the People with Disabilities in the Asian and Pacific Region

WHEREAS the Meeting to Launch the Asian and Pacific Decade of Disabled Persons 1993—2002 convened by the Economic and Social Commission for Asian and Pacific held at Beijing on 1st to 5th December, 1992, adopted the Proclamation on the Full Participation and Equality of People with Disabilities Asian and Pacific Region ;

AND WHEREAS India is a signatory to the said Proclamation ;

AND WHEREAS it is considered necessary to implement the Proclamation aforesaid.

BE it enacted by Parliament in the Forty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRILIMINARY

1. *Short title, extent and commencement*—(1) This Act may be called the Persons With Disabilities (Equal Opportunities Protection of Rights and Full Participation) Act, 1995.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification, appoint.

2. *Definitions*.—In this Act, unless the context otherwise requires,—

(a) “appropriate Government” means,—

(i) in relation to the Central Government or any establishment wholly or substantially financed by that Government, or a Cantonment Board constituted under Cantonment Act, 1924 (2 of 1924), the Central Government ;

(ii) in relation to a State Government or any establishment wholly or substantially financed by that Government, or any local authority, other than a Cantonment Board, the State Government ;

(iii) in respect of the Central Coordination Committee and the Central Executive Committee the Central Government ;

(iv) in respect of the State Coordination Committee and the State Executive Committee, the State Government ;

(b) "blindness" refers to a condition where a person suffers from any of the following conditions, namely:—

(i) total absence of sight ; or

(ii) visual acuity not exceeding 6/60 or 20/200 (snellen) in the better eye with correcting lenses ; or

(iii) limitation of the field of vision subtending an angle of 20 degree or worse ;

(c) "Central Coordination Committee" means the Central Coordination Committee constituted under sub-section (1) of section 3;

(d) "Central Executive Committee" means the Central Executive Committee constituted under sub-section (1) of section 9 ;

(e) "cerebral palsy" means a group of non-progressive conditions of a person characterised by abnormal motor control posture resulting from brain insult or injuries occurring in the pre-natal, peri-natal or infant period of development;

(f) "Chief Commissioner" means the Chief Commissioner appointed under sub-section (1) of section 57 ;

(g) "Commissioner" means the Commissioner appointed under sub-section (1) of section 60 ;

(h) "competent authority" means the authority appointed under section 50 ;

(i) "disability" means—

(i) blindness ;

(ii) low vision ;

(iii) leprosy-cured ;

(iv) hearing impairment;

(v) locomotor disability;

(vi) mental retardation ;

(vii) mental illness ;

(j) "employer" means,—

(i) in relation to a Government, the authority notified by the Head of the Department in this behalf or where no such authority is notified, the Head of the Department; and

(ii) in relation to an establishment, the chief executive officer of that establishment ;

(k) "establishment" means a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a local authority or a Government company as defined in section 617 of the Companies Act, 1956, (1 of 1956), and includes Departments of a Government ;

(l) "hearing impairment" means loss of sixty decibels or more in the better year in the conversational range of frequencies ;

- (m) "institution for persons with disabilities" means an institution for the reception, care protection, education, training, rehabilitation or any other service of persons with disabilities ;
- (n) "leprosy-cured person" means any person who has been cured of leprosy but is suffering from—
- (i) loss of sensation in hands or feet as well as loss of sensation and paresis in the eye and eye-lid but with no manifest deformity ;
 - (ii) manifest deformity and paresis but having sufficient mobility in their hands and feet to enable them to engage in normal economic activity ;
 - (iii) extreme physical deformity as well as advanced age which prevents him from undertaking any gainful occupation ;
- and the expression "leprosy cured" shall be construed accordingly ;
- (o) "locomotor disability" means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy ;
- (p) "medical authority" means any hospital or institution specified for the purposes of this Act by notification by the appropriate Government ;
- (q) "mental illness " means any mental disorder other than mental retardation ;
- (r) "mental retardation" means a condition of arrested or incomplete development of mind of a person which is specially characterised by subnormality of intelligence ;
- (s) "notification" means a notification published in the Official Gazette ;
- (t) "person with disability" means a person suffering from not less than forty per cent of any disability as certified by a medical authority ;
- (u) "person with low vision" means a person with impairment of visual functioning even after treatment or standard refractive correction but who uses or is potentially capable of using vision for the planning or execution of a task with appropriate assistive device ;
- (v) "prescribed" means prescribed by rules made under this Act ;
- (w) "rehabilitation" refers to a process aimed at enabling persons with disabilities to reach and maintain their optimal physical, sensory, intellectual, psychiatric or social functional levels ;
- (x) "Special Employment Exchange" means any officer or place established and maintained by the Government for the collection and furnishing of information, either by keeping of registers or otherwise, respecting—
- (i) persons who seek to engage employees from amongst the persons suffering from disabilities ;
 - (ii) persons with disability who seek employment ;
 - (iii) vacancies to which person with disability seeking employment may be appointed ;

- (y) "State Co-ordination Committee" means the State Co-ordination Committee constituted under sub-section (1) of section 13 ;
- (z) "State Executive Committee" means the State Executive Committee constituted under sub-section (1) of section 19.

CHAPTER II

THE CENTRAL COORDINATION COMMITTEE

3. *Central Coordination Committee.*—(1) The Central Government shall by notification constitute a body to be known as the Central Coordination Committee to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

- (2) The Central Coordination Committee shall consist of—
- (a) the Minister in-charge of the Department of Welfare in the Central Government, Chairperson, *ex officio* ;
- (b) the Minister of State in-charge of the Department of Welfare in the Central Government, Vice-Chairperson, *ex officio* ;
- (c) Secretaries to the Government of India in-charge of the Departments of Welfare, Education Woman and Child Development, Expenditure, Personnel, Training and Public Grievances, Health, Rural Development, Industrial Development, Urban Affairs and Employment, Science and Technology, legal Affairs, Public Enterprises, Members, *ex officio* ;
- (d) Chief Commissioner Member , *ex officio* ;
- (e) Chairman Railway Board, Member, *ex officio* ;
- (f) Director-General of labour, Employment and Training, Member, *ex officio* ;
- (g) Director, National Council for Educational Research and Training, Member, *ex officio* ;
- (h) three Members of Parliament, of whom two shall be elected by the House of the People and one by the Council of States, Members ;
- (i) three persons to be nominated by the Central Government to represent the interests, which in the opinion of that Government ought to be represented, Members ;
- (j) the Directors of the—
- (i) National Institute for the Visually Handicapped, Dehradun ;
- (ii) National Institute for the Mentally Handicapped, Secundrabad ;
- (iii) National Institute for the Orthopaedically Hpndicapped, Calcutta ;
- (iv) Ali Yavar Jung National Institute for the Hearing Handicapped, Bombay,

Members, *ex officio* ;

- (k) four Members to be nominated by the Central Government by rotation to represent the States and the Union territories in such manner as may be prescribed by the Central Government ;

Provided that no appointment under this clause shall be made except on the recommendation of the State Government or, as the case may be, the Union Territory ;

- (l) five persons as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the Central Government, one from each area of disability, Members :

Provided that while nominating persons under this clause, the Central Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes ;

- (m) Joint Secretary to the Government of India in the Ministry of Welfare dealing with the welfare of the handicapped, Member-Secretary, *ex officio*.

(3) The office of the Member of the Central Coordination Committee shall not disqualify its holder for being chosen as or for being a Member of either House of Parliament.

4. *Term of office of Members.*—(1) Save as otherwise provided by or under this Act a Member of Central Coordination Committee nominated under clause (i) or clause (l) of sub-section (2) of section 3 shall hold office for a term of three years from the date of his nomination :

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The term of office of an *ex officio* Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(3) The Central Government may if it thinks fit remove any Member nominated under clause (i) or clause (l) of sub-section (2) of section 3, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(4) A member nominated under clause (i) or clause (l) of sub-section (2) of section 3 may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

(5) A casual vacancy in the Central Coordination Committee shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(6) A Member nominated under clause (i) or clause (l) of sub-section (2) of section 3 shall be eligible for renomination.

(7) Members nominated under clause (i) and clause (l) of sub-section (2) of section 3 shall receive such allowances as may be prescribed by the Central Government.

5: *Disqualifications.*—(1) No person shall be a Member of the Central Coordination Committee, who—

- (a) is, or at any time has been, adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is or has been convicted of an offence which in the opinion of the Central Government, involves moral turpitude, or

(d) is or at any time has been convicted of an offence under this Act ; or

(e) has so abused in the opinion of the Central Government his position as a Member as to render his continuance in the Central Coordination Committee to the interests of the general public.

(2) No order of removal shall be made by the Central Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in subsection (1) or sub-section (6) of section 4, a Member who has been removed under this section be eligible for renomination as a Member.

6. *Vacation of seats by Members.*—If a Member of the Central Coordination Committee becomes subject to any of the disqualifications specified in section 5, his seat shall become vacant.

7. *Meetings of the Central Coordination Committee.*—The Central Coordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the Central Government.

8. *Functions of the Central Coordination Committee.*—(1) Subject to the provisions of this Act, the function of the Central Coordination Committee shall be to serve as the national focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by persons with disabilities.

(2) In particular and without prejudice to the generality of the foregoing, the Central Coordination Committee may perform all or any of the following functions, namely:—

(a) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities. ;

(b) develop a national policy to address issues faced by persons with disabilities

(c) advise the Central Government on the formulation of policies, programmes, legislation and projects with respect to disability ;

(d) take up the cause of persons with disabilities with the concerned authorities and the international organisations with a view to provide for schemes and projects for the disabled in the national plans and other programmes and policies evolved by the international agencies ;

(e) review in consultation with the donor agencies their funding policies from the perspective of their impact on persons with disabilities ;

(f) take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions ;

(g) monitor and evaluate the impact of policies and programmes designed for achieving and full participation of persons with disabilities ;

(h) to perform such other functions as may be prescribed by the Central Government.

9. *Central Executive Committee.*—(1) The Central Government shall constitute a Committee to be known as the Central Executive Committee to perform the functions assigned to it under this Act.

(2) The Central Executive Committee shall consist of—

- (a) the Secretary to the Government of India in the Ministry of Welfare, Chairperson, *ex officio* ;
- (b) the Chief Commissioner, Member, *ex officio* ;
- (c) the Director-General for Health Services, Member, *ex officio* ;
- (d) the Director-General, Employment and Training, Member, *ex officio* ;
- (e) six persons not below the rank of a Joint Secretary to the Government of India, to represent the Ministries or Departments of Rural Development, Education, Welfare, Personnel, Public Grievances and Pension and Urban Affairs and Employment, Science and Technology, Members, *ex officio* ;
- (f) the Financial Advisor, Ministry of Welfare in the Central Government, Member, *ex officio* ;
- (g) Advisor (Tariff) Railway Board, Member, *ex officio* ;
- (h) four members to be nominated by the Central Government, by rotation, to represent the State Governments and the Union territories in such manner as may be prescribed by the Central Government ;
- (i) one person to be nominated by the Central Government to represent the interest, which in the opinion of the Central Government ought to be represented, Member ;
- (j) five persons, as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the Central Government, one from each area of disability, Members ;

Providing that while nominating persons under this clause, the Central Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes ;

(k) Joint Secretary to the Government of India in the Ministry of Welfare Dealing with the welfare of the handicapped, Member-Secretary, *ex officio* ;

(3) Members nominated under clause (i) and clause (j) of sub-section (2) shall receive such allowances as may be prescribed by the Central Government.

(4) A Member nominated under clause (i) or clause (j) of sub-section (2) may at any time resign his office by writing under his hand addressed to the Central Government and the seat of the said Member shall thereupon become vacant.

10. *Functions of the Central Executive Committee.*—(1) The Central Executive Committee shall be the executive body of the Central Coordination Committee and shall be responsible for carrying out the decisions of the Central Coordination Committee.

(2) Without prejudice to the provisions of sub-section (1), the Central Executive Committee shall also perform such other functions as may be delegated to it by the Central Coordination Committee.

11. Meetings of the Central Executive Committee.—The Central Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the Central Government.

12. Temporary association of persons with Central Executive Committee for particular purposes.—(1) The Central Executive Committee may associate with itself in such manner and for such purposes as may be prescribed by the Central Government any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Central Executive Committee under sub-section (1) for any purpose shall have the right to take part in the discussions of the Central Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said Committee, and shall not be a member for any other purpose.

(3) A person associated with the said Committee under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be prescribed, by the Central Government.

CHAPTER III

THE STATE COORDINATION COMMITTEE

13. State Coordination Committee.—(1) Every State Government shall, by notification, constitute a body to be known as the State Coordination Committee to exercise the powers conferred on, and to perform the function assigned to it, under this Act.

(2) The State Coordination Committee shall consist of —

(a) the Minister-in-charge of the Department of Social Welfare in the State Government Chairperson, *ex officio* ;

(b) the Minister of State in-charge of the Department of Social Welfare, if any, Vice-Chairperson, *ex officio* ;

(c) Secretaries to the State Government in-charge of the Departments of Welfare Education Woman and Child Development Expenditure Personnel Training and Public Grievances Health. Rural Development, Industrial Development, Urban Affairs and Employment. Science and Technology, Public Enterprises, by whatever name called, Members, *ex officio* ;

(d) Secretary of any other Department which the State Government considers necessary, Member, *ex officio* ;

(e) Chairman Bureau of Public Enterprises (by whatever name called) Member, *ex officio* ;

(f) five persons, as far as practicable, being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, Members ;

Provided that while nominating persons under this clause, the State Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes ;

(g) three Members of State Legislature, of whom two shall be elected by the legislative Assembly and one by the legislative Council, if any ;

(h) three persons to be nominated by that State Government to represent agriculture, industry or trade or any other interest, which in the opinion of State Government ought to be represented, Members, *ex officio* ;

(i) the Commissioner, Member, *ex officio* ;

(j) Secretary to the State Government dealing with the welfare of the handicapped. Member-Secretary, *ex officio* .

(3) Notwithstanding anything contained in this section, no State Coordination Committee shall be constituted for a Union territory and in relation to a Union territory, the Central Coordination Committee shall exercise the functions and perform the functions of a State Coordination Committee for the Union territory ;

Provided that in relation to a Union territory, the Central Coordination Committee may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify.

14. *Terms and conditions of service of Members.*—(1) Save as otherwise provided by or under this Act, a Member of a State Coordination Committee nominated under clause (f) or clause (h) of sub-section (2) of section 13 shall hold office for a term of three years from the date of his nomination :

Provided that such a Member shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) The term of office of an *ex officio* Member shall come to an end as soon as he ceases to hold the office by virtue of which he was so nominated.

(3) The State Government may, if it thinks fit, remove any Member nominated under clause (f) or clause (h) of sub-section (2) of section 13, before the expiry of his term of office after giving him a reasonable opportunity of showing cause against the same.

(4) A Member nominated under clause (f) or clause (h) of sub-section (2) of section 13 may, at any time, resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

(5) A casual vacancy in the State Coordination Committee shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the Member in whose place he was so nominated.

(6) A Member nominated under clause (f) and clause (h) of sub-section (2) of section 13 shall be eligible for renomination.

(7) Members nominated under clause (f) and clause (h) sub-section (2) of section 13 shall receive such allowances as may be prescribed by the State Government.

15. Disqualifications.—(1) No person shall be a Member of the State Coordination Committee, who—

- (a) is, or at any time, has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or
- (b) is of unsound mind and stands so declared by a competent court, or
- (c) is or has been convicted of an offence which in the opinion of the State Government involves moral turpitude, or
- (d) is or at any time has been convicted of an offence under this Act, or
- (e) has so abused, in the opinion of the State Government, his position as a member as to render his continuance in the State Coordination Committee detrimental to the interests of the general public.

(2) No order of removal shall be made by the State Government under this section unless the Member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (6) of section 14, a Member who has been removed under this section shall not be eligible for renomination as a Member.

16. Vacation of seats.—If a Member of the State Coordination Committee becomes subject to any of the disqualifications specified in section 15, his seat shall become vacant.

17. Meetings of the State Coordination Committee.—The State Coordination Committee shall meet at least once in every six months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed.

18. Functions of the State Coordination Committee.—(1) Subject to the provisions of this Act, the function of the State Coordination Committee shall be to serve as the state focal point on disability matters and facilitate the continuous evolution of a comprehensive policy towards solving the problems faced by person with disabilities.

(2) In particular and without prejudice to the generality of the foregoing function the State Coordination Committee, may, within the State perform all or any of the following functions, namely:—

(a) review and coordinate the activities of all the Departments of Government and other Governmental and non-Governmental Organisations which are dealing with matters relating to persons with disabilities ;—

(b) develop a State policy to address issues faced by persons with disabilities ;

(c) advise the State Government on the formulation of policies, programmes, legislation and projects with respect to disability ;

(d) review, in consultation with the donor agencies, their funding policies from the perspective of their impact on persons with disabilities ;

(e) take such other steps to ensure barrier free environment in public places, work places, public utilities, schools and other institutions ;

(f) monitor and evaluate the impact of policies and programmes designed for achieving equality and full participation of persons with disabilities;

(g) to perform such other functions as may be prescribed by the State Government.

19. State Executive Committee.—(1) The State Government shall constitute a committee to be known as the State Executive Committee to perform the functions assigned to it under this Act.

(2) the State Executive Committee shall consist of

(a) the Secretary, Department of Social Welfare, Chairperson, *ex officio* ;

(b) the Commissioner, Member, *ex officio* ;

(c) nine persons not below the rank of a Joint Secretary to the State Government, to represent the Departments of Health, Finance, Rural Development, Education, Welfare, Personnel Public Grievances, Urban Affairs labour and Employment, Science and Technology, Members *ex officio* ;

(d) one person to be nominated by the State Government to represent the interest, which in the opinion of the State Government ought to be represented, Member ;

(e) five persons, as far as practicable being persons with disabilities, to represent non-governmental organisations or associations which are concerned with disabilities, to be nominated by the State Government, one from each area of disability, members

Provided that while nominating persons under this clause, the State Government shall nominate at least one woman and one person belonging to Scheduled Castes or Scheduled Tribes ;

(f) Joint Secretary dealing with the disability division in the Department of Welfare, Member-Secretary, *ex officio* ;

(3) Members nominated under clause (d) and clause (e) of sub-section (2) shall receive such allowances as may be prescribed by the State Government.

(4) A Member nominated under clause (d) or clause (e) may at any time resign his office by writing under his hand addressed to the State Government and the seat of the said Member shall thereupon become vacant.

20. Functions of the State Executive Committee.—(1) The State Executive Committee shall be the executive body of the State Coordination Committee and shall be responsible for carrying out the decisions of the State Coordination Committee.

(2) Without prejudice to the provisions of sub-section (1), the State Executive Committee shall also perform such other functions as may be delegated to it by the State Coordination Committee.

21. Meetings of the State Executive Committee.—The State Executive Committee shall meet at least once in three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed by the State Government.

22. Temporary association of persons with State Executive Committee for particular purposes.—(1) The State Executive Committee may associate with itself in such manner and

for such purposes as may be prescribed by the State Government any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the State Executive Committee under sub-section (1) for any purpose shall have the right to take part in the discussions of the State Executive Committee relevant to that purpose, but shall not have a right to vote at a meeting of the said Committee, and shall not be a member for any other purpose.

(3) A person associated with the said Committee under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the said Committee, as may be prescribed by the State Government.

23. Power to give directions.—In the performance of its functions under this Act,

- (a) the Central Coordination Committee shall be bound by such directions in writing, as the Central Government may give to it, and
- (b) the State Coordination Committee shall be bound by such directions in writing as the Central Coordination Committee or the State Government may give to it :

Provided that where a direction given by the State Government is inconsistent with any direction given by the Central Coordination Committee, the matter shall be referred to the Central Government for its decision.

24. Vacancies not to invalidate proceedings.—No act or proceeding of the Central Coordination Committee, the Central Executive Committee, a State Coordination Committee or a State Executive Committee shall be called in question on the ground merely on the existence of any vacancy in or any defect in the constitution of such Committees.

CHAPTER IV

PREVENTION AND EARLY DETECTION OF DISABILITIES

25. Appropriate Government and local authorities to take certain steps for the prevention of occurrence of disabilities.—Within the limits of their economic capacity and development, the appropriate Governments and the local authorities, with a view to preventing the occurrence of disabilities, shall—

- (a) undertake or cause to be undertaken surveys, investigations and research concerning the cause of occurrence of disabilities ;
- (b) promote various methods of preventing disabilities;
- (c) screen all the children at least once in a year for the purpose of identifying “at-risk” cases;
- (d) provide facilities for training to the staff at the primary health centres;
- (e) sponsor or cause to be sponsored awareness campaigns and disseminate or cause to be disseminated information for general hygiene, health and sanitation;
- (f) take measures for pre-natal, perinatal and post-natal care of mother and child;
- (g) educate the public through the pre-schools, schools, primary health centres, village level workers and anganwadi workers;
- (h) create awareness amongst the masses through television, radio and other mass media on the causes of disabilities and the preventive measures to be adopted.

CHAPTER V

EDUCATION

26. *Appropriate Governments and local authorities to provide children with disabilities free education, etc.*—The appropriate Governments and the local authorities shall—

- (a) ensure that every child with a disability has access to free education in an appropriate environment till he attains the age of eighteen years;
- (b) endeavour to promote the integration of students with disabilities in the normal schools;
- (c) promote setting up of special schools in Government and private sector for those in need of special education, in such a manner that children with disabilities living in any part of the country have access to such schools;
- (d) endeavour to equip the special schools for children with disabilities with vocational training facilities.

27. *Appropriate Governments and local authorities to make schemes and programmes for non-formal education, etc.*—The appropriate Governments and the local authorities shall by notification make schemes for—

- (a) conducting part-time classes in respect of children with disabilities who having completed education up to class fifth and could not continue their studies on a whole, time basis ;
- (b) conducting special part-time classes for providing functional literacy for children in the age group of sixteen and above ;
- (c) imparting non-formal education by utilizing the available manpower in rural areas after giving them appropriate orientation.
- (d) imparting education through open school or open universities;
- (e) conducting class and discussions through interactive electronic or other media;
- (f) providing every child with disability free of cost special books and equipments needed for his education.

28. *Research for desiging and developing new assistive devices, teaching aids, etc.*—The appropriate Governments shall initiate or cause to be initiated research by official and non-governmental agencies for the purpose of designing and developing new assistive devices, teaching aids, special teaching materials or such other items as are necessary to give a child with disability equal opportunities in education.

29. *Appropriate Governments to set up teachers training institutions to develop trained man-powers for schools for children with disabilities.*—The appropriate Governments shall set up adequate number of teachers' training institutions and assist the national institutes and other voluntary organisations to develop teachers' training programmes specialising in disabilities so that requisite trained manpower is available for special schools and integrated schools for children with disabilities.

30 *Appropriate Governments to prepare a comprehensive education scheme providing for transport facilities, supply of books, etc.*—Without prejudice to the foregoing provisions, the appropriate Governments shall by notification prepare a comprehensive education scheme which shall make provision for—

- (a) transport facilities to the children with disabilities or in the alternative financial incentives to parents or guardians to enable their children with disabilities to attend schools;

- (b) the removal of architectural barriers from schools, colleges or other institutions imparting vocational and professional training;
- (c) the supply of books, uniforms and other materials to children with disabilities attending schools;
- (d) the grant of scholarship to students with disabilities;
- (e) setting up of appropriate for the redressal of grievances of parents regarding the placement of their children with disabilities;
- (f) suitable modification in the examination system to eliminate purely mathematical questions for the benefit of blind students and students with low vision;
- (g) restructuring of curriculum for the benefit of children with disabilities;
- (h) restructuring the curriculum for benefit of students with hearing impairment to facilitate them to take only one language as part of their curriculum.

31. *Educational institutions to provide amanuensis to students with visual handicap.*—All educational institutions shall provide or cause to be provided amanuensis to blind students and students with or low vision

CHAPTER VI

EMPLOYMENT

32. *Identification of posts which can be reserved for persons with disabilities.*—Appropriate Governments shall—

- (a) identify posts, in the establishments, which can be reserved for the persons with disability.
- (b) at periodical intervals not exceeding three years, review the list of posts identified and up-date the list taking into consideration the development in technology.

33. *Reservation of posts.*—Every appropriate Government shall appoint in every establishment such percentage of vacancies not less than three per cent for persons or class of persons with disability of which one per cent each shall be reserved for persons suffering from—

- (i) blindness or low vision;
- (ii) hearing impairment;
- (iii) locomotor disability or cerebral palsy.

in the posts identified for each disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any department or establishment, by notification subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

34. *Special Employment Exchange.*—(1) The appropriate Government may, by notification require that from such date as may be specified, by notification, the employer in every establishment shall furnish such information or return as may be prescribed in relation to vacancies appointed for persons with disability that have occurred or are about to occur in that establishment to such Special Employment Exchange as may be prescribed and the establishment shall thereupon comply with such requisition.

(2) The form in which and the intervals of time for which information or returns shall be furnished and the particulars, they shall contain shall be such as may be prescribed.

35. *Power to inspect record or document in possession of any establishment.*—Any person authorised by the Special Employment Exchange in writing, shall have access to any relevant record or document in the possession of any establishment and may enter at any reasonable time and premises where he believes such record or document to be, and inspect or take copies of relevant records or documents or ask any question necessary for obtaining any information.

36. *Vacancies not filled up to be carried forward.*—Where in any recruitment year any vacancy under section 33, cannot be filled up due to non-availability of a suitable person with disability or, for any other sufficient reason, such vacancy shall be carried forward in the succeeding recruitment year and if in the succeeding recruitment year also suitable person with disability is not available, it may first be filled by interchange among the three categories and only when there is no person with disability available for the post in that year, the employer shall fill up the vacancy by appointment of a person, other than a person with disability :

Provided that if the nature of vacancies in an establishment is such that a given category of person cannot be employed, the vacancies may be interchanged among the three categories with the prior approval of the appropriate Government.

37. *Employers to maintain records.*—(1) Every employer shall maintain such record in relation to the person with disability employed in his establishment in such form and in such manner as may be prescribed by the appropriate Government.

(2) The records maintained under sub-section (1) shall be open to inspection at all reasonable hours by such persons as may be authorised in this behalf by general or special order by the appropriate Government.

38. *Schemes for ensuring employment of persons with disabilities.*—(1) The appropriate Government and local authorities shall be notified to formulate schemes for ensuring employment of persons with disabilities, and such schemes may provide for—

- (a) the training and welfare of persons with disabilities;
- (b) the relaxation of upper age limit;
- (c) regulating the employment;
- (d) health and safety measures and creation of a non-handicapping environment in places where persons with disabilities are employed;
- (e) the manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
- (f) constituting the authority responsible for the administration of the scheme.

39. *All educational institutions to reserve seats for persons with disabilities.*—All Government educational institutions and other educational institutions receiving aid from the Government, shall reserve not less than three per cent, seats for persons with disabilities.

40. *Vacancies to be reserved in poverty alleviation schemes.*—The appropriate Government and local authorities shall reserve not less than three per cent, in all poverty alleviation schemes for the benefit of persons with disabilities.

41. *Incentives to employers to ensure five per cent of the work force is composed of persons with disabilities.*—The appropriate Government and the local authorities shall, within the limits of their economic capacity and development, provide incentives to employers both in public and private sectors to ensure that at least five per cent of their work force is composed of persons with disabilities.

CHAPTER VII

AFFIRMATIVE ACTION

42. *Aids and appliances to persons with disabilities.*—The appropriate Governments shall by notification make schemes to provide aids and appliances to persons with disabilities.

43. *Schemes for preferential allotment of land for certain purposes.*—The appropriate Governments and local authorities shall by notification frame schemes in favour of persons with disabilities, for the preferential allotment of land at concessional rates for—

- (a) house ;
- (b) setting up business ;
- (c) setting up of special recreation centres ;
- (d) establishment of special schools ;
- (e) establishment of research centres ;
- (f) establishment of factories by entrepreneurs with disabilities.

CHAPTER VIII

NON-DISCRIMINATION

44. *Non-discrimination in transport.*—Establishments in the transport sector shall, within the limits of their economic capacity and development for the benefit of persons with disabilities, take special measures to—

- (a) adapt rail compartments, buses, vessels and aircrafts in such a way as to permit easy access to such persons ;
- (b) adapt toilets in rail compartments, vessels, aircrafts and waiting rooms in such a way as to permit the wheel chair users to use them conveniently.

45. *Non-discrimination on the road.*—The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for—

- (a) installation of auditory signals at red lights in the public roads for the benefit of persons with visually handicap ;
- (b) causing curb cuts and slopes to be made in pavements for the easy access of wheel chair users ;
- (c) engraving on the surface of the zebra crossing for the blind or for persons with low vision ;
- (d) engraving on the edges of railway platforms for the blind, or for persons with low vision ;
- (e) devising appropriate symbols of disability ;
- (f) warning signals at appropriate places.

46. *Non-discrimination in the built environment.*—The appropriate Governments and the local authorities shall, within the limits of their economic capacity and development, provide for—

- (a) ramps in public buildings ;
- (b) adaptation of toilets for wheel chair users ;
- (c) braille symbols and auditory signals in elevators or lifts ;
- (d) ramps in hospitals, primary health centres and other medical care and rehabilitation institutions.

47. *Non-discrimination in Government employment.*—(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service :

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits :

➤ Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability :

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

CHAPTER IX

RESEARCH AND MANPOWER DEVELOPMENT

48. *Research.*—The appropriate Governments and local authorities shall promote and research, *inter alia*, in the following are as:—

- (a) prevention of disability ;
- (b) rehabilitation including community based rehabilitation;
- (c) development of assistive devices including their psycho-social aspects;
- (d) job identification ;
- (e) on site modifications in offices and factories.

➤ 49. *Financial incentive to Universities to enable them to undertake research.*—The appropriate Government shall provide financial assistance to universities, other institutions of higher learning, professional bodies and non-governmental research units or institutions, for undertaking research for special education, rehabilitation and manpower development

CHAPTER X

RECOGNITION OF INSTITUTIONS FOR PERSONS WITH DISABILITIES

50. *Competent authority.*—The State Government shall appoint any authority as it deems fit to be a competent authority for the purposes of this Act.

51. *No person to establish or maintain an institution for persons with disabilities except in accordance with a certificate of registration.*—Save as otherwise provided under this Act, no person shall establish or maintain any institution for persons with disabilities except under and in accordance with a certificate of registration issued in this behalf by the competent authority :

➤ Provided that a person maintaining an institution for persons with disabilities immediately before the commencement of this Act may continue to maintain such institution for a period of six months from such commencement and if he has made an application for such certificate under this section within the said period of six months, till the disposal of such application.

52. *Certificate of registration.*—(1) Every application for a certificate of registration shall be made to the competent authority in such form and in such manner as may be prescribed by the State Government.

(2) On receipt of an application under sub-section (1), the competent authority shall make such enquiries as it may deem fit and where it is satisfied that the applicant has complied with the requirements of this Act and the rules made thereunder it shall grant a certificate of registration to the applicant and where it is not so satisfied the competent authority shall, by order, refuse to grant the certificate applied for :

Provided that before making any order refusing to grant a certificate the competent authority shall give to the applicant a reasonable opportunity of being heard and every order of refusal to grant a certificate shall be communicated to the applicant in such manner as may be prescribed by the State Government.

(3) No certificate of registration shall be granted under sub-section (2) unless the institution with respect to which an application has been made is in a position to provide such facilities and maintain such standards as may be prescribed by the State Government.

(4) A certificate of registration granted under this section,—

- (a) shall, unless revoked under section 53, remain in force for such period as may be prescribed by the State Government;
- (b) may be renewed from time to time for a like period; and
- (c) shall be in such form and shall be subject to such conditions as may be prescribed by the State Government.

(5) An application for renewal of a certificate of registration shall be made not less than sixty days before the period of validity.

(6) The certificate of registration shall be displayed by the institution in a conspicuous place.

53. Revocation of certificate.—(1) The competent authority may, if it has reasonable cause to believe that the holder of the certificate of registration granted under sub-section (2) of section 52 has—

- (a) made a statement in relation to any application for the issue or renewal of the certificate which is incorrect or false in material particulars; or
- (b) committed or has caused to be committed any breach of rules or any conditions subject to which the certificate was granted.

it may, after making such inquiry, as it deems fit, by order, revoke the certificate:

Provided that no such order shall be made until an opportunity is given to the holder of the certificate to show cause as to why the certificate should not be revoked.

(2) Where a certificate in respect of an institution has been revoked under sub-section (1), such institution shall cease to function from the date of such revocation :

Provided that when an appeal lies under section 54 against the order or revocation, such institution shall cease to function—

- (a) where no appeal has been preferred immediately on the expiry of the period prescribed for the filing of such appeal, or
- (b) where such appeal has been preferred, but the order of revocation has been upheld, from the date of the order of appeal.

(3) On the revocation of a certificate in respect of an institution, the competent authority may direct that any person with disability who is an inmate of such institution on the date of such revocation, shall be—

(a) restored to the custody of her or his parent, spouse or lawful guardian, as the case may be, or

(b) transferred to any other institution specified by the competent authority.

(4) Every institution which holds a certificate of registration which is revoked under this section shall, immediately after such revocation, surrender such certificate to the competent authority.

54. Appeal.—(1) Any person aggrieved by the order of the competent authority refusing to grant a certificate or revoking a certificate may, within such period as may be prescribed by the State Government, prefer an appeal to that Government against such refusal or revocation.

(2) The order of the State Government on such appeal shall be final.

55. Act not to apply to institutions established or maintained by the Central or State Government.—Nothing contained in this Chapter shall apply to an institution for persons with disabilities established or maintained by the Central Government or a State Government.

CHAPTER XI

INSTITUTION FOR PERSONS WITH SEVERE DISABILITIES

56. Institutions for persons with severe disabilities.—The appropriate Government may establish and maintain institutions for persons with severe disabilities at such places as it thinks fit.

(2) Where, the appropriate Government is of opinion that any institution other than an institution established under sub-section (1), is fit for the rehabilitation of the persons with severe disabilities the Government may recognise such institution as an institution for persons with severe disabilities for the purposes of this Act :

Provided that no institution shall be recognised under this section unless such institution has complied with the requirements of this Act and the rules made thereunder.

(3) Every institution established under sub-section (1) shall be maintained in such manner and satisfy such conditions as may be prescribed by the appropriate Government.

(4) For the purposes of this section “person with severe disability” means a person with eighty per cent or more of one or more disabilities.

CHAPTER XII

THE CHIEF COMMISSIONER AND COMMISSIONERS FOR PERSONS WITH DISABILITIES

57. Appointment of Chief Commissioner for persons with disabilities.—(1) The Central Government may, by notification, appoint a Chief Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as the Chief Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension, gratuity and other retirement benefits) of the Chief Commissioner shall be such as may be prescribed by the Central Government.

(4) The Central Government shall determine the nature and categories of officers and other employees required to assist the Chief Commissioner in the discharge of his functions and provide the Chief Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Chief Commissioner shall discharge their functions under the general superintendence of the Chief Commissioner.

(6) The salaries and allowances and other conditions of service of officers and employees provided to the Chief Commissioner shall be such as may be prescribed by the Central Government.

58. Functions of the Chief Commissioner.—The Chief Commissioner shall —

- (a) coordinate the work of the Commissioners;
- (b) monitor the utilisation of funds disbursed by the Central Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the Central Government on the implementation of the Act at such intervals as that Government may prescribe.

59. Chief Commissioner to look into complaints with respect to deprivation of rights of persons with disabilities.—Without prejudice to the provisions of section 58 the Chief Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to—

- (a) deprivation of rights of person with disabilities;
- (b) non-implementation of law, rules, bye-laws, regulations, executive orders, guidelines or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities.

60. Appointment of Commissioners for persons with disabilities.—(1) Every State Government may, by notification appoint a Commissioner for persons with disabilities for the purposes of this Act.

(2) A person shall not be qualified for appointment as a Commissioner unless he has special knowledge or practical experience in respect of matters relating to rehabilitation.

(3) The salary and allowances payable to and other terms and conditions of service (including pension gratuity and other retirement benefits) of the Commissioner shall be such as may be prescribed by the State Government.

(4) The State Government shall determine the nature and categories of officers and other employees required to assist the Commissioner in the discharge of his functions and provide the Commissioner with such officers and other employees as it thinks fit.

(5) The officers and employees provided to the Commissioner shall discharge their functions under the general superintendence of the Commissioner.

(6) The salaries and allowances and other conditions of service of officers and employees provided to the Commissioner shall be such as may be prescribed by the State Government.

61. *Powers of the Commissioner.*—The Commissioner within the State shall—

- (a) coordinate with the departments of the State Government for the programmes and schemes for the benefit of persons with disabilities;
- (b) monitor the utilisation of funds disbursed by the State Government;
- (c) take steps to safeguard the rights and facilities made available to persons with disabilities;
- (d) submit reports to the State Government on the implementation of the Act at such intervals as that Government may prescribe and forward a copy thereof to the Chief Commissioner.

62. *Commissioner to look into complaints with respect to matters relating to deprivation of rights of persons with disabilities.*—Without prejudice to the provisions of section 61 the Commissioner may of his own motion or on the application of any aggrieved person or otherwise look into complaints with respect to matters relating to—

- (a) deprivation of rights of persons with disabilities;
- (b) non-implementation of laws, rules, bye-laws, regulations, executive orders, guideline or instructions made or issued by the appropriate Government and the local authorities for the welfare and protection of rights of persons with disabilities,

and take up the matter with the appropriate authorities.

63. *Authorities and officers to have certain powers of civil court.*—The Chief Commissioner and the Commissioners shall, for the purpose of discharging their functions under this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:—

- (a) summoning and enforcing the attendance of witnesses;
- (b) requiring the discovery and production of any document;
- (c) requisitioning any public record or copy thereof from any court or office;
- (d) receiving evidence on affidavits; and
- (e) issuing commissions for the examination of witnesses or documents.

(2) Every proceeding before the Chief Commissioner and Commissioners shall be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code 45 of 1860 and the Chief Commissioner, the Commissioner, the competent authority, shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

64. *Annual report to be prepared by the Chief Commissioner.*—(1) The Chief Commissioner shall prepare in such form and at such time for each financial year as may be prescribed by the Central Government an annual report giving a full account of his activities during the previous financial year and forward a copy thereof to the Central Government.

(2) The Central Government shall cause the annual report to be laid before each House of Parliament along with the recommendations explaining the action taken or proposed to be taken on the recommendation made therein in so far as they relate to the Central Government and the reasons for non-acceptance, if any, of any such recommendation or part.

65. *Annual reports to be prepared by the Commissioners.*—(1) The Commissioner shall prepare in such form and at such time for each financial year as may be prescribed by the State

- (v) the period for which a certificate of registration shall be valid under clause (a) of sub-section (4) of section 52;
- (w) the form in which and conditions subject to which a certificate of registration shall be granted under clause (c) of sub-section (4) of section 52;
- (x) period within which an appeal shall lie under sub-section (1) of section 54;
- (y) the manner in which an institution for persons with severe disabilities shall be maintained and conditions which have to be satisfied under sub-section (3) of section 56.
- (z) the salary, allowances and other terms and conditions of service of the Chief Commissioner under sub-section (3) of section 57;
- (za) the salary, allowances and other conditions of service of officers and employees under sub-section (6) of section 57;
- (zb) intervals at which the Chief Commissioner shall report to the Central Government under clause (d) of section 58;
- (zc) the salary, allowances and other terms and conditions of service of the Commissioner under sub-section (3) of section 60;
- (zd) the salary, allowances and other conditions of service of officers and employees under sub-section (6) of section 60;
- (ze) intervals within which the Commissioner shall report to the State Government under clause (d) of section 61;
- (zf) the form and time in which annual report shall be prepared under sub-section (1) of section 64;
- (zg) the form and time in which annual report shall be prepared under sub-section (1) of section 65;
- (zh) any other matter which is required to be or may be prescribed.

(3) Every notification made by the Central Government under the proviso to section 33, proviso to sub-section (2) of section 47, every scheme framed by it under section 27, section 30, sub-section (1) of section 38, section 42, section 43, section 67, section 68 and every rule made by it under sub-section (1), shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, notification or scheme, both Houses agree that the rule, notification or scheme should not be made, the rule, notification or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule, notification or scheme, as the case may be.

(4) Every notification made by the State Government under the proviso to section 33, proviso to sub-section (2) of section 47, every scheme made by it under section 27, section 30, sub-section (1) of section 38, section 42, section 43, section 67, section 68 and every rule made by it under sub-section (1) shall be laid, as soon as may be after it is made, before each House of State Legislature, where it consists of two Houses or where such legislature consists of one House before that House.

74. *Amendment of Act 39 of 1987.*—In section 12 of the Legal Services Authorities Act, 1987, for clause (d), the following clause shall be substituted, namely :—

“(d) a person with disability as defined in clause (i) of section 2 of the Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995”.